

# BOARD OF REGENTS BRIEFING PAPER

## 1. AGENDA ITEM TITLE: Nevada State College Student Housing Project \_\_\_\_\_

MEETING DATE: June 7, 2018 \_\_\_\_\_

### 2. BACKGROUND & POLICY CONTEXT OF ISSUE:

Nevada State College issued a Request for Information (RFI) from public and/or private entities that may wish to participate in and assist with developing certain areas of Nevada State campus land. The RFI process which included representation from the City of Henderson and concluded with an analysis from an independent consultant, was fully open and competitive.

The College presented the results of the RFI process at the December 2015 Business, Finance and Faculties Committee meeting following which a non-binding memorandum of understanding (MOU) was negotiated, brought back to the Committee, and approved by the Regents in June 2016. The College entered into the MOU on August 1, 2016 with Ledcor Construction, Inc. (Ledcor) and Eric A. Traub, dba Traub and Associates (Traub) and has been working cooperatively on the first project, student housing, as well as a number of leads on other projects. At the December 2017 meeting, the Board approved an extension of this MOU to American Public Development, LLC (APD), an entity whose principals are Eric Traub and Cam Walker, formerly of Ledcor Construction.

APD has assembled a first-rate team to finance, construct, operate and maintain Nevada State College's first student housing facility. The facility will consist initially of 312 beds, configured in a village style community, with study and tutoring spaces as well as recreational areas. Based on the initial demand study and confirmed by an investment grade demand study, the initial inventory of beds will be leased out by the second year of operations and the supply of beds will need to increase by 64 each year thereafter. This does not include any estimated occupancy from the College of Southern Nevada, which has always been contemplated as a potential partnership between the two institutions. Because of the estimated rising demand, the village concept is preferred as it will create easy opportunity for rapid expansion.

The proposed project will have APD enter into a Ground Lease with the college. APD will, in turn, enter into a Sublease with Public Finance Authority (PFA) who will be the owner of the improvement. This will enable PFA to access tax-exempt, 32-year, bond financing, underwritten by CitiGroup, for the construction of the project. Under the plan of finance all the money for the project and significant reserves will be in place before commencement of construction. PFA will pledge project revenues plus their Leasehold Interest in the project in order to access the financing. A Leasehold Mortgage will need to be authorized by the Board to provide PFA with that Leasehold Interest. In addition, the college will need to certify certain facts to the underwriter stipulating that all necessary actions by the college have been appropriately approved.

NSC will also enter into a Development Agreement with APD for the housing project. This agreement details the deliverables and process by which the housing project will be designed and constructed. The Development Agreement provides the College opportunities to collaborate in the schematic design phase of the project to ensure that the space conforms to the needs of the college. It is contemplated that, in addition to desired and affordable housing floor plans, the project will have recreational areas, a pool and spaces for tutoring, educational programming and living-learning communities. The college will also have input in the design development and construction document phases. APD will enter into a Sub-development Agreement with PFA, as the owner of the improvements. The Sub-Development Agreement will enable APD to develop the project using the financing acquired by PFA.

APD, through PFA, will enter into a Design-Build Contract with Sletten Construction and PGAL Architects. The Design-Build method allows the project to be constructed in an efficient manner. The project is currently in early schematic design, The unit floor plans were established and included in the demand survey so that students could visualize the end products. This provided an early start to some of the critical design aspects. In addition, the college entered into an agreement in June 2017 with Capriati Construction Corp to perform mass grading at no cost to the college in preparation for expanding the campus. The grading project has cleared most of the pad for the housing project to reside, enabling the housing project, if approved by the Board, to be ready for occupancy by August 1, 2019. Although the grading project provides a tremendous benefit to the housing project timeline, it creates what is referred to as Broken Priority. In Nevada, mechanic's liens have priority as of the date a project begins and deeds of trust have priority on the date recorded. In this case, the grading precedes the deed of trust, which has yet to be recorded, creating a conflict between what a mechanic's lien might claim and what a lender might expect. The gap places the title company at risk. In order to proceed with the project, the college must indemnify the title company against any lien claims that predate the recording of the deed of

trust. While this does create some risk to the college, it is deemed to be extremely low and limited only to potential liens related to the grading project on the housing site. The Board is asked to approve such indemnity.

APD will also enter into an Operation Agreement with American Campus Communities (ACC). ACC is the nation's largest developer, owner and manager of high-quality student housing communities. ACC will be responsible for staffing the housing facility in order to lease housing units as well as to provide maintenance and upkeep of the facility. ACC and its staff shall abide by and enforce any and all college and NSHE policies related to student housing. The college will have a process available to file complaints against any ACC employee and to request removal of any student for cause. The college will interact with ACC for appropriate marketing of the housing. While the college will not be setting rental rates, the college may request lower rates should the project debt coverage ratio exceed 1.50%. This request shall not be unreasonably withheld. ACC will also work with the college to provide campus life programming for resident students as well as hosting learning opportunities in the housing commons. ACC will be responsible for conducting facilities and systems assessments and shall work with APD to utilize Repair and Maintenance Reserve funds to maintain the facility in excellent working condition.

ACC will monitor the construction schedule diligently and will work with the college to establish a lease-up strategy that beds are not leased to students without ensuring the availability of that room. This strategy may result in lower occupancy in the first semester or delayed lease-up due to construction complications. Because Nevada State College is currently a commuter campus with only a handful of out of state students, it may be possible to lease-up the facility with a mid-semester date. In addition, the village style housing format will allow for the completion of individual units ahead of others without causing inconvenience to students. These will all be lease-up options that need to be considered. The overall goal is that no student will be displaced due to premature leasing.

The implementing agreements are constructed to avoid the pitfalls experienced by other public-private housing ventures in the past. The Lease and Development Agreement both contains explicit start and completion dates. APD will be required to furnish a performance bond in the amount of 100% of the project. The Development Agreement provides for the Vice President for Finance and Business Operations to approve performance bond actions on behalf of the college. The Development Agreement stipulates that the college may record a Notice of Non-Responsibility, requiring APD to record a surety bond for 150% of the construction contract amount. Also, as mentioned above, this is a bond-financed project and all proceeds will be appropriately allocated to funds held by the Trustee.

The Lease contains provisions for base rent to the college. The rent will be subordinated in the first 5 years but will be part of the operating expenses beginning in the 6th year of operation. The subordinated rent revenue is the only financial risk to the college. All operating expenses are part of the project operating budget. Because the college is at risk for potential loss of revenue, both APD, in its role as Asset Manager, and ACC as Operator, are sharing in the risk by having one-half of their fees subordinated. The project flow of funds is detailed in the Lease, consistent with the project Term Sheet which will drive the terms of the Bond Indenture. The fund flows in the following manner:

- 1) Payment of operating expenses
- 2) Payment of financial principal and interest
- 3) Funding for the Bond Rebate Fund
- 4) Funding for the Debt Service Reserve
- 5) Funding for the Repair and Maintenance Reserve Fund
- 6) Subordinated one-half of the Asset Management and Operator fees.
- 7) Base Rent to the College
- 8) Maintain the Minimum Extraordinary Expense Account balance
- 9) Maintain the Minimum Operating Reserve Fund balance
- 10) All remaining is Available Cash that will be paid out to the college

It is estimated that the college will receive approximately \$70M in Base Rents and Available Cash over the term of the Project. At the end of the Project, the facility will be turned over to the college.

### **3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

President Bart Patterson requests approval of the following items related to the proposed student housing project:

1. Approve the Ground Lease Agreement between Nevada State College and American Public Development, LLC
2. Approve the Project Development Agreement between Nevada State College and American Public Development, LLC
3. Approve the Recognition, Consent, Non-Disturbance and Estoppel Agreement between Nevada State College and American Public Development, LLC
4. Approve the Indemnity Agreement between Nevada State College and First American Title Insurance Company

5. Authorize the Vice President for Finance and business Operations to certify to the underwriter general matters related to the college and confirming execution of project implementing agreements to which the college is a party.
6. Authorize the Vice President for Finance and Business Operations to approve items related to performance bond allocations on behalf of Nevada State College
7. Authorize the Vice President for Finance and Business Operations to record a Notice of Non-Responsibility
8. Authorize the Chancellor to negotiate minor modifications to the implementing agreements and to submit a Closing Certificate to the underwriter.

**4. IMPETUS (WHY NOW?):**

Nevada State College has been working diligently for the past two years to assemble a public-private housing project to begin the transformation to a residential campus for our students. With recent tremendous enrollment growth, a resident campus is logically the next step for Nevada State. The team assembled is first-rate and the project is ready to commence. Given the rising cost of construction in Nevada, any delays will only result in higher rental rates to our students. In addition, there is a risk of rising interest rates that could drive up the cost of capital. Therefore, we urge the Board to approve this project now so that construction can begin immediately.

**5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:**

- Access (Increase participation in post-secondary education)
- Success (Increase student success)
- Close the Achievement Gap (Close the achievement gap among underserved student populations)
- Workforce (Collaboratively address the challenges of the workforce and industry education needs of Nevada)
- Research (Co-develop solutions to the critical issues facing 21<sup>st</sup> century Nevada and raise the overall research profile)
- Not Applicable to NSHE Strategic Plan Goals

**INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL**

Campus housing provides an opportunity for Nevada State to serve more students. Our location can be a challenge for students and can deter potential students from attending. Many of the college's students commute to campus via public transportation. Some trips are reportedly in excess of 2 hours each way. On campus housing can serve as a solution for more students to attend college. Financial aid cost of attendance includes calculations for on campus housing. So, it is an affordable option regardless of student financial status. Our campus housing also creates an opportunity for living-learning communities which have proven effective for student success. Finally, student housing creates an opportunity to integrate more cultural experiences to our students. On campus housing can draw students from other regions and countries to give Nevada Students exposure to ideas and customs that many would not otherwise have.

**6. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- This project has been well-defined and is shovel ready
- A residential campus is the next logical step for Nevada State
- There is no financial expenditure risk to the college
- The project will bring in approximate \$71M over the life of the project that can be used to build our needed campus infrastructure
- The college has work with legal advisors to review the pitfalls of other public-private ventures and the agreements include provisions that protect the college from similar events.
- The college has established a campus life committee of which a portion of their charge is to prepare for the transition to a residential campus.

**7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

- The Board does not wish for NSC to become a residential campus at this time.

**8. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

- Delay the project
- Seek other avenues for acquiring campus housing

**9. RECOMMENDATION FROM THE CHANCELLOR'S OFFICE:**

**10. COMPLIANCE WITH BOARD POLICY:**

Consistent With Current Board Policy: Title #\_\_\_\_\_ Chapter #\_\_\_\_\_ Section #\_\_\_\_\_

Amends Current Board Policy: Title #\_\_\_\_\_ Chapter #\_\_\_\_\_ Section #\_\_\_\_\_

Amends Current Procedures & Guidelines Manual: Chapter #\_\_\_\_\_ Section #\_\_\_\_\_

Other: \_\_\_\_\_

X Fiscal Impact: Yes X No \_\_\_\_\_

Explain: Although the risk is low, there is a potential that lien claims under the college's indemnity to the title company could exceed \$25,000\_

## **State Campus Village Student Housing Project**

### Documents - Table of Contents

1. Ground Lease Agreement
2. Development Agreement
3. Recognition, Consent and Non-Disturbance Agreement
4. Subleasehold Mortgage Deed of Trust
5. Indemnity Agreement

### **Reference Materials**

1. Project Flow Chart Description of the Transaction
2. Sub-Lease Agreement
3. Sub-Development Agreement
4. Asset Management Agreement
5. Facilities Operating Agreement
6. Finance Term Sheet
7. Closing Certification
8. Project Pro-Forma
9. Project Development Renderings and Site Plan
10. Design Build Agreement

**GROUND LEASE AGREEMENT  
FOR  
STATE CAMPUS VILLAGE**

*by and between*

**THE BOARD OF REGENTS OF THE  
NEVADA SYSTEM OF HIGHER EDUCATION**

*on behalf of*

**NEVADA STATE COLLEGE  
("LANDLORD")**

*and*

**AMERICAN PUBLIC DEVELOPMENT, LLC  
("TENANT")**

**Dated as of \_\_\_\_\_, 2018**

**GROUND LEASE AGREEMENT  
FOR  
STATE CAMPUS VILLAGE**

This **GROUND LEASE AGREEMENT FOR STATE CAMPUS VILLAGE** (this "**Lease**") dated for reference purposes only as of \_\_\_\_\_, 201\_\_, is made by and between the **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION**, acting on behalf of the Nevada State College, a constitutional entity of the State of Nevada ("**Landlord**" or "**NSC**"), and **AMERICAN PUBLIC DEVELOPMENT, LLC**, a Nevada limited liability company ("**Tenant**"). Landlord and Tenant are individually sometimes referred to herein as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

**A.** Nevada State College is a public college founded in 2002 and a part of the Nevada System of Higher Education ("**NSHE**"). The NSHE is governed by a thirteen-person Board of Regents ("**Regents**") who are elected by the citizens of the State of Nevada. NSC exists in accordance with the laws of the State of Nevada and is an important institution of higher learning in the State.

**B.** In early 2010, NSC completed its campus master plan (the "**Campus Master Plan**") for its 509-acre site ("**Site**"). Student housing is identified as a significant component of the master plan, and the Site is eventually intended to provide housing for approximately 5,200 students on approximately forty six (46) acres.

**C.** In furtherance of Site development activities, NSC commenced an RFI process in 2015 which resulted in NSC entering into a non-binding memorandum of understanding on August 1, 2016, with Eric A. Traub dba Traub and Associates ("**Traub**") and Ledcor Construction, Inc. ("**Ledcor**") to assist NSC with the development of the Site.

**D.** Traub and Ledcor have worked on development opportunities for the Site, including for student housing. A real estate analysis and demand study (the "**Demand Study**") was prepared that demonstrates that there is significant demand for student housing at NSC.

**E.** A new Memorandum of Understanding was approved by the Regents on December 1, 2017, between NSC and Tenant as the successor to Traub and Ledcor.

**F.** The real property described on **Exhibit A** (the "**Land**"), comprising approximately seven and one-half (7.5) acres, has been identified for the initial phase of student housing for the Site. The project is a development of seven (7) buildings of student housing, and associated improvements and amenities, totaling approximately three hundred twelve (312) beds, all subject to further revision by Tenant, as shown on the attached **Exhibit B** (the "**Project**"), and shall be known as the "**State Campus Village**".

**G.** It is anticipated that there will be additional phases of student housing developed at the Site, as determined by Tenant and approved by Landlord. NSC and Tenant have not made or committed to any other development project in connection with the Site, or the Land.

**H.** It is anticipated that, at the time of the Closing (as defined herein), the Tenant will enter into the PFA Sublease (as defined herein) with the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin ( "**PFA**") in order to transfer control of the Project to PFA and qualify for tax exempt financing to fund the Project development, finance, and construction costs.

**I.** It is anticipated that, at the time of the Closing, the Tenant will enter into the Project Development Agreement with NSC.

**J.** It is anticipated that, at the time of the Closing, the Tenant will enter into the PFA Sub-Development Agreement with PFA

**K.** The Parties, in fulfillment of certain of the undertakings set forth in the Memorandum of Understanding, are now prepared to enter into this Lease for the development of the Premises.

**L.** Pursuant to the terms, conditions, covenants, and other provisions of this Lease, (i) Landlord desires to lease the Land to the Tenant; and (ii) Tenant desires to lease the Land from Landlord, and to construct and operate the Improvements (as such term is defined herein), all in accordance with the terms of this Lease and the Project Development Agreement (as such term is defined herein), upon the Land.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein set forth by each Party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each Party hereto, Landlord and Tenant hereby agree as follows with the intent to be legally bound:

## **ARTICLE 1 DEFINITIONS**

For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Article 1 have the meanings assigned to them in this Article and include the plural as well as the singular; (ii) all accounting terms defined in generally accepted accounting principles applicable to Developer and NSC, respectively ("**GAAP**"), and not otherwise defined herein have the meanings assigned to them in accordance with GAAP at the applicable time; (iii) all references in this Lease to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease; (iv) the word "including" shall have the same meaning as the phrase "including, without limitation,;" and (v) the words "herein," "hereof"



and “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision:

**1.1** “**Academic Term**” means the spring and fall semesters of NSC’s academic year, which run from approximately mid-January to mid-May (“**Spring Term**”) and from approximately mid-August to mid-December (“**Fall Term**”) of each calendar year.

**1.2** “**Affiliate**” means any Person directly or indirectly controlling, controlled by, or under common control with another Person or a blood relative or spouse of such Person, if such Person is a natural Person. For the purposes of this definition, “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

**1.3** “**Applicable Laws**” means applicable local, state, or federal laws, statutes, codes, ordinances, rules, regulatory notices, and any notices or orders of any and all governmental, quasi-governmental, or regulatory authorities and other authorities, and agencies having jurisdiction over the Premises, which are in effect from time to time.

**1.4** “**Asset Management Agreement**” means that certain agreement entered into between Tenant and Subtenant at the time of Closing relating to the management of the Project.

**1.5** “**Asset Management Fee**” has the meaning assigned to it in Section 14.6.

**1.6** “**Base Rent**” has the meaning assigned to it in Section 5.1.

**1.7** “**Beds**” means the maximum number of persons to whom the Tenant is allowed to sublease under all Applicable Laws within State Campus Village whether or not all such Beds are in fact leased from time to time.

**1.8** “**Beds**” means the maximum number of persons to whom the Tenant is allowed to sublease under all Applicable Laws within State Campus Village whether or not all such Beds are in fact leased from time to time.

**1.9** “**Building Codes**” means all building codes, ordinances, and other Applicable Laws applicable to the construction of the Improvements.

**1.10** “**Business Day**” means any day which is not a Saturday, Sunday, or legal holiday under the laws of the State of Nevada.

**1.11** “**Campus**” means the main campus of the Nevada State College, Henderson, located at 1300 Nevada State Drive, Henderson, Nevada 89002.

**1.12** “**Campus Master Plan**” has the meaning assigned to it in Recital B.

**1.13** “**Certificate of Occupancy**” means an approved final inspection, certificate of occupancy, certificate of completion, or other similar verification from the building division of the City of Henderson, the Public Works Board of the State of Nevada, or similar governmental agency with jurisdiction to inspect the Improvements, indicating the building, structure, or part thereof for which the approved final inspection was made or certificate was issued, was found by the building official at the time of certificate issuance or final inspection to be in substantial compliance with the provisions of Applicable Law and the technical codes.

**1.14** “**Closing**” shall mean the Tenant’s closing on its Financing Agreements.

**1.15** “**Commercial Premises**” means those portions of the Premises to be used for commercial purposes, to be identified as such on the Construction Documents.

**1.16** “**Commercial Sub-sublease**” means a Sub-sublease for space within the Commercial Premises, if any.

**1.17** “**Commercial Sub-subtenant**” means a Sub-subtenant of any portion of the Commercial Premises.

**1.18** “**Construction Documents**” means the final plans, specifications, and drawings for the construction of the Improvements to be prepared at Tenant’s expense in accordance with the Project Development Agreement.

**1.19** “**City Code**” means the City Code of the City of Henderson, Nevada.

**1.20** “**Debt Service**” means, for any debt service payment date, the amount required to pay the principal of (whether pursuant to a stated maturity or redemption requirements applicable thereto) and/or interest on financing permitted under this Lease and required to design, construct, and furnish the Premises pursuant to this Lease.

**1.21** “**Default Rate**” means a rate that is one percent (1%) per annum in excess of the per annum rate of interest announced as the “prime rate” in the Wall Street Journal or its successor, in effect from time-to-time; provided that, in no event shall the Default Rate hereunder exceed the maximum amount or rate that lawfully may be charged in the circumstances, if such a maximum exists.

**1.22** “**Default Termination Notice**” has the meaning assigned to it in Section 24.4.

**1.23** “**Demand Study**” has the meaning assigned to it in Recital D.

**1.24** “**Developer**” shall mean American Public Development, LLC.

**1.25** “**Dwelling**” shall have the meaning set forth in Section 9.3(b).

**1.26** “**Environmental Laws**” means Applicable Laws pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act.

**1.27** “**Environmental Laws**” means Applicable Laws pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act.

**1.28** “**Event of Default**” means either a Tenant Event of Default or a Landlord Event of Default.

**1.29** “**Expenses**” means, for any period, all expenses paid in connection with the operation, maintenance, financing and repair of the Premises during such period, including, but not limited to the following:

(a) Taxes, charges or fees for, and taxes on, the furnishing of electricity, fuel, water, sewer, gas, oil and other utilities; security (provided, neither Tenant nor Landlord is obligated to provide security except as explicitly set forth herein);

(b) pest control; cleaning of windows and exterior curtain walls; janitorial services; trash and snow removal; landscaping and repair and maintenance of grounds;

(c) salaries, wages, and benefits for employees of Facility Operator engaged in the operation, maintenance or repair of the Premises including benefits, payroll taxes and worker’s compensation insurance;

(d) license fees and governmental permits;

(e) casualty and liability insurance, and other insurance coverages such as professional liability insurance;

(f) cleaning supplies; uniforms and dry cleaning service;

(g) supplies, repairs, replacements (irrespective of an asset’s useful life) and other expenses for maintaining and operating the Premises;

(h) expenses of travel in connection with the operation of the Premises;

(i) Tenant, PFA, and Facility Operator’s accounting and audit fees related to the Project;

(j) legal fees and costs relating to the operation, repair or maintenance of the Premises or incurred in order to reduce operating expenses, service or management contracts with independent contractors;

(k) the Facility Operator Fee paid under the Facility Operating Agreement, excluding the Subordinated Facility Operator Fee which is deferred and paid at Section 5.3(f);

(l) telephone, telegraph and stationery; and the costs of any other items which, under generally accepted accounting principles consistently applied from year to year

with respect to the Premises, constitute operating and maintenance costs attributable to any or all of the Premises;

(m) fees charged and retained by PFA; and

(n) the Asset Management Fee paid under the Asset Management Agreement, excluding the Subordinated Asset Management Fee which is deferred and paid at Section 5.3(f);

with all of the foregoing calculated on a cash basis (and not in accordance with GAAP).

**1.30** “**Facility Operator**” shall have the meaning set forth in Section 8.2.

**1.31** “**Facility Operator Fee**” mean the fee incurred by PFA’s Asset Manager pursuant to the Facility Operating Agreement.

**1.32** “**Financing Agreements**” means any instrument or agreement between Tenant or PFA and a Leasehold Mortgagee providing financing for the Project, including any Leasehold Mortgage.

**1.33** “**Fixtures**” means any and all equipment, machinery, and other fixtures or improvements that are permanently attached to and made part of the Improvements or that, although they can be removed from the Improvements, are necessary to operate or maintain the Improvements in a normal and ordinary way, such as HVAC systems, electrical systems, plumbing systems, and elevator systems.

**1.34** “**Force Majeure Event**” means a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Lease; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and other events beyond the control of a Party.

**1.35** “**Full Operations**” means the Project having reached Substantial Completion and the sub-subleasing of at least seventy-five percent (75%) of the Project’s beds.

**1.36** “**GAAP**” means generally accepted accounting principles consistently applied (as such term is used in the American Institute of Certified Public Accountants Professional Standards).

**1.37** “**General Contractor**” means a contractor engaged by Tenant to perform the Improvement Work or a portion thereof.

**1.38** “**Governmental Authorities**” means City of Henderson, the State of Nevada, the United States and their respective agencies but specifically excludes NSHE, the Regents and NSC for purposes of this Lease.

**1.39** “**Hazardous Substances**” means “hazardous substances,” “regulated substances,” “hazardous wastes” or “solid wastes” (as such terms are defined and/or used in applicable Environmental Laws), including, without limitation, asbestos, lead paint, and polychlorinated biphenyls, or environmentally deleterious material in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to applicable Environmental Laws.

**1.40** “**Improvements**” means any and all buildings and improvements from time to time hereafter constructed on the Land, including without limitation all additions, alterations and improvements thereto or replacements thereof, and all Fixtures, machinery, landscaping, signage, and equipment installed therein or affixed thereto necessary for the proper operation of such buildings and improvements; provided that “**Improvements**” does not include any of the Personal Property or Sub-subtenant Improvements.

**1.41** “**Improvement Work**” means the work of design and construction required by the terms of this Lease to be performed by Tenant to cause the Substantial Completion of the Improvements and all work of construction to be performed by Tenant and its contractors as required by this Lease and such additional work, if any, as may be required by the City of Henderson, the Public Works Board of the State of Nevada, or other governmental or quasi-governmental agencies and public utilities such as but not limited to, the Las Vegas Valley Water District, Southern Nevada Water Authority, Clark County Water Reclamation District, Clark County School District, NV Energy, Southwest Gas, and Republic Services, as a condition to issuance of building permits or a Certificate of Occupancy or provision of services to the Premises in accordance with the Construction Documents.

**1.42** “**Land**” means the unimproved real property described on **Exhibit A**, together with all rights, easements, and appurtenances thereto or in anywise belonging.

**1.43** “**Landlord**” has the meaning assigned to it in the introductory paragraph of this Lease.

**1.44** “**Landlord Event of Default**” has the meaning assigned to it in Section 31.4.

**1.45** “**Lease**” has the meaning assigned to it in the introductory paragraph of this Lease.

**1.46** “**Lease Commencement Date**” has the meaning assigned to it in Section 4.1.

**1.47** “**Leasehold Estate**” means the estate of Tenant created by this Lease upon and subject to all the terms and conditions of this Lease.

**1.48** “**Leasehold Mortgage**” means and includes any mortgage, deed of trust and any other security instrument or instruments constituting a lien upon Tenant or PFA’s interest under the Lease and the Leasehold Estate, or the PFA Sublease and Sublease Estate, and any modifications, extensions, renewals, and replacements thereof; provided, Landlord has approved or is deemed to have approved such instruments as provided in Section 24.2.

**1.49** “**Leasehold Mortgagee**” means any holder of a Leasehold Mortgage or any interest therein.

**1.50** “**Lease Term**” means the period from the Lease Commencement Date until the Lease Term expires pursuant to Section 4.2 unless earlier terminated as provided herein.

**1.51** “**Lease Year**” means a period of twelve (12) months beginning on the Lease Commencement Date and each twelve (12) month period thereafter until the end of the Lease Term.

**1.52** “**Major Alterations**” has the meaning set forth in Section 6.2.

**1.53** “**Memorandum of Lease**” has the meaning assigned to it in Section 32.7.

**1.54** “**Memorandum of Understanding**” means the Memorandum of Understanding referenced in Recital E.

**1.55** “**NSC**” has the meaning assigned to it in the introductory paragraph of this Lease.

**1.56** “**NSC Student**” means an individual who (a) is enrolled at and attending NSC for the then current semester, (b) is enrolled as a student at NSC for a subsequent semester or has applied for acceptance at or been accepted at NSC for a subsequent semester, or (c) with respect to summer occupancy, (i) was enrolled at and attending NSC in the previous Spring Term or (ii) is enrolled at NSC for the upcoming Fall Term or has applied for acceptance at or been accepted at NSC for the upcoming Fall Term.

**1.57** “**NSHE**” has the meaning assigned to it in Recital A.

**1.58** “**New Lease**” has the meaning assigned to it in Section 24.6.

**1.59** “**Occupancy Date**” has the meaning assigned to it in Section 9.1.

**1.60** “**Occupant**” means a Sub-subtenant, licensee, user, owner, and anyone occupying or using any Dwelling or Commercial Premises under or through PFA, including their employees, agents, contractors and invitees.

**1.61** “**Off-Campus Housing**” means student housing that is not, as of the Lease Commencement Date or from time to time in the future, (i) owned, leased, managed, or otherwise controlled by NSC or an Affiliate of NSC, or (ii) located on land owned, leased, or otherwise controlled by NSC or an Affiliate of NSC.

**1.62** “**On-Campus Housing**” means student housing that is (i) owned, leased, managed, or otherwise controlled by NSC, an Affiliate of NSC or someone under contract with NSC to lease, manage, or control on behalf of NSC, or (ii) located on land owned, leased, or otherwise controlled by NSC or an Affiliate of NSC. For avoidance of doubt, the Project is considered On-Campus Housing.

1.63 “**Party**” and “**Parties**” have the meanings assigned to them in the first paragraph of this Lease.

1.64 “**Permitted Exceptions**” means the easements, restrictions, encumbrances, or other exceptions listed on **Exhibit C** hereto.

1.65 “**Permitted Financing**” has the meaning assigned to it in Section 24.1.

1.66 “**Permitted Residents**” has the meaning assigned to it in Section 9.9.

1.67 “**Person**” means an individual, corporation, limited liability company, partnership, joint venture, unincorporated association, or other entity.

1.68 “**Personal Property**” means all furniture, furnishings, appliances, equipment, and personal property of any nature whatsoever now or hereafter located or to be located on or in the Premises other than the Fixtures.

1.69 “**PFA**” means the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin, and its assigns or successors, including, but not limited to, any successor in interest following the acquisition of the Leasehold Estate by Leasehold Mortgagee or its nominee in a foreclosure sale or by deed in lieu of foreclosure.

1.70 “**PFA Sub-Development Agreement**” means the sub-development agreement entered into at the time of Closing between Tenant and PFA relating to Tenant’s obligation to develop the Project consistent with the terms set forth herein.

1.71 “**PFA Sublease**” means the Sublease Agreement entered into at the time of Closing between Tenant and PFA whereby PFA subleases the Premises from the Tenant.

1.72 “**Police**” has the meaning assigned to it in Section 10.1.

1.73 “**Premises**” has the meaning assigned to it in Section 2.5.

1.74 “**Project**” means the current portion of the State Campus Village described in Recital F to be developed by Tenant pursuant to the Project Development Agreement and the PFA Sub-Development Agreement.

1.75 “**Project Development Agreement**” shall mean that certain Project Development Agreement between NSC and Developer dated concurrently with this Lease.

1.76 “**Regents**” has the meaning assigned to it in Recital A.

1.77 “**Rent**” means Base Rent and any other sum required or stipulated to be paid by Tenant to Landlord hereunder.

1.78 “**Rent Commencement Date**” has the meaning assigned to it in Section 5.1.

**1.79** “**Resident**” means any Sub-subtenant who (a) occupies or resides in a portion of the Residential Premises pursuant to a Sub-sublease with PFA, or (b) has applied for residence in the Residential Premises and been accepted by PFA.

**1.80** “**Residential Premises**” means those portions of the Premises to be used as housing facilities, to be identified as such on the Design Development Documents.

**1.81** “**Residential Sub-sublease**” means a Sub-sublease for space within the Residential Premises.

**1.82** “**Revenue**” means, for any period, all revenues derived from the operation and leasing of the Premises during such period, including but not limited to any interest earned thereon, as calculated on a cash basis; provided, however, that Revenue shall not include: (i) Sub-subtenant Deposits, unless and until such Sub-subtenant Deposits are forfeited to or applied by Tenant toward rental obligations in accordance with the terms of a Sub-sublease with respect to any failure by a Sub-subtenant to perform its obligations; (ii) proceeds or payments under insurance policies (except proceeds of any business interruption or rental loss insurance, which proceeds are hereby deemed included in Revenue); (iii) condemnation proceeds; and (iv) proceeds from any sale or financing of the Premises.

**1.83** “**Secured Lenders**” has the meaning assigned to it in Section 24.13.

**1.84** “**Secured Property**” has the meaning assigned to it in Section 24.13.

**1.85** “**Student Resident**” means a Resident who is also a NSC Student.

**1.86** “**Subleasehold Estate**” means the estate of PFA created by the PFA Sublease upon and subject to all the terms and conditions of the PFA Sublease.

**1.87** “**Subordinated Asset Manager Fee**” means one-half (50%) of the Asset Manager Fee.

**1.88** “**Subordinated Facility Operator Fee**” means one-half (50%) of the Facility Operator Fee.

**1.89** “**Substantial Completion**” means, with respect to the Improvements, or any portion thereof, that the fire marshal of jurisdiction has certified them, as applicable, as ready for occupancy, but not including Commercial Sub-subtenant improvements.

**1.90** “**Sub-sublease**” means any sub-sublease or license of the Premises or any part thereof by PFA to another party. The term “Sub-subleases” consists of the Residential Sub-subleases and Commercial Sub-subleases.

**1.91** “**Subtenant**” means, initially, the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin, pursuant to the PFA Sublease, and, in the event of and upon termination of the PFA Sublease, means a tenant, subtenant, sub-subtenant, or occupant of a portion of the Premises pursuant to a sublease.



**1.92** “**Sub-subtenant**” means any Person having an interest in a portion of the Premises pursuant to a Sub-sublease.

**1.93** “**Sub-subtenant Deposits**” means all security deposits or security interests paid by a Sub-subtenant in advance or other deposits received from any Sub-subtenant.

**1.94** “**Sub-subtenant Improvements**” means any and all improvements from time to time made to any portion of the Premises by a Commercial Sub-subtenant, including without limitation all additions, alterations, and improvements, or replacements thereof, which may be implemented in one or more phases, and all fixtures, machinery, signage, and equipment installed therein or affixed thereto necessary or desirable for the operation of such portion of the Premises by such Commercial Sub-subtenant.

**1.95** “**Tax**” means, individually and collectively, any and all taxes, assessments, license fees, excises and charges of every sort, nature, and kind that during the Lease Term are levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of Tenant or Landlord in and to the Premises.

**1.96** “**Tenant**” has the meaning assigned to it in the introductory paragraph of this Lease.

**1.97** “**Tenant Event of Default**” has the meaning assigned to it in Section 31.1.

**1.98** “**Transfer**” has the meaning assigned to it in Section 26.1.

**1.99** “**Unavoidable Delay**” has the meaning assigned to it in 32.11.

## ARTICLE 2 LEASE AND TITLE

**2.1** **Lease Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all the Land, situated in the City of Henderson, Nevada, more particularly described in **Exhibit A**, and any and all appurtenant interests, rights, privileges, and easements, together with all licenses, agreements, easements, and rights of access appurtenant to the Land for pedestrian and vehicular ingress, egress and regress to and from the Land and to and from any entries and entrances located thereby and connecting with a public right-of-way whether now existing or acquired subsequent to the execution and delivery of this Lease, together with any improvements now existing (collectively, the “**Land**”). Such rights of access granted to Tenant hereunder shall be non-exclusive and extend to all Subtenants of Tenant, and all employees, licensees, and invitees of Tenant and/or Tenant’s Subtenants.

**2.2** **Title.** Title to the Land shall be free and clear of all title exceptions except the Permitted Exceptions, to be evidenced by a Leasehold Title Insurance Policy, with a no

encroachment endorsement, on the Land insuring Tenant's Leasehold Estate in the Land subject only to the Permitted Exceptions.

**2.3 Other Easements.** Notwithstanding any other provision of this Lease, Tenant and Landlord shall reasonably cooperate with one another in good faith to define and grant additional necessary easements relating to or benefiting the Land on or over the Campus. Further, Landlord shall timely grant to Tenant access, temporary access, sidewalk, and/or utility easements (including without limitation electricity, cable, data, gas, water, storm water, and sewer) over and across the Campus as are needed for Tenant's development, construction, and operation of the Improvements. In addition, NSC shall, from time to time, upon request by Tenant, exercise reasonable efforts and cooperate with Tenant, at no material cost to Landlord, in order to obtain releases, annulments, relocations, or abandonments of existing easements and other Permitted Exceptions that Tenant determines need to be released or abandoned in connection with the development and construction of the Improvements.

**2.4 Title to Improvements.** During the Term, ownership of the Improvements constructed by PFA pursuant to the PFA Sublease, the Development Agreement and the PFA Sub-Development Agreement shall remain with PFA. PFA's ownership rights shall automatically terminate and all such rights shall revert to the Landlord, and the Landlord shall be the sole owner of all Improvements upon the termination of this Lease.

**2.5 Premises.** The Leasehold Estate and the Improvements shall constitute the Premises.

**ARTICLE 3  
[INTENTIONALLY OMITTED]**

**ARTICLE 4  
LEASE TERM**

**4.1 Lease Term Commencement.** The term of this Lease (the "***Lease Term***") shall commence on the Effective Date (the "***Lease Commencement Date***").

**4.2 Lease Term Expiration.** Subject to the early termination provisions of this Lease, including but not limited to Section 4.3, the Lease Term shall expire on the earlier of (i) the thirtieth (30th) anniversary of the Rent Commencement Date, or (ii) the satisfaction of all obligations of payment and performance which are imposed under or with respect to the Permitted Financing including, without limitation, payment of all PFA expenses associated therewith.

**4.3 Failure to Commence Construction.**

(a) In the event Tenant shall fail to Commence Construction (as hereinafter defined) within two (2) years following the Effective Date, Landlord shall have the right to terminate this Lease by written notice to Tenant, Developer, PFA, and to any Leasehold Mortgagee under this Lease (an "***Intent to Terminate***"). The Intent to Terminate shall contain

the effective date of the proposed termination which shall be not less than one hundred eighty (180) days after the date of the Intent to Terminate.

(b) In the event Tenant does Commence Construction prior to the termination date specified in the Intent to Terminate, the Intent to Terminate shall be void and the Lease shall continue as otherwise provided. If Tenant shall fail to Commence Construction prior to the expiration of such 180-day period, Landlord may terminate this Lease at any time thereafter by written notice to Tenant, PFA, Developer, and to any Leasehold Mortgagee under this Lease; provided, if Tenant does Commence Construction prior to the date Landlord terminates this Lease, Landlord's right to terminate shall be void.

(c) For purposes of the foregoing, the term "**Commence Construction**" refers to Tenant or PFA having (a) obtained funding of a Permitted Financing, (b) obtained the building permit from the City of Henderson to permit Tenant or PFA to commence vertical construction of the Improvements, and (c) commenced actual grading of the Land; provided that Tenant shall be entitled to an equitable extension of time as a result of a Force Majeure Event.

**4.4 Substantial Completion.** There shall be Substantial Completion of the construction on or before that date which is eighteen (18) months from the date of the initial commencement of construction; provided that Tenant shall be entitled to an equitable extension of time as a result of a Force Majeure Event. The Project shall be constructed, and completed, substantially in accordance with the Project Schedule attached hereto as **Exhibit "E"**.

**4.5 Notice of Non-Responsibility.** Landlord may record a notice of non-responsibility as allowed by NRS 108.234 with respect to the construction of the Improvements.

## ARTICLE 5 RENT

**5.1 Base Rent.** Base Rent shall be payable, solely from Revenues and subject to Section 5.3, starting on the Rent Commencement Date and on the first day of each calendar month thereafter during the Lease Term. The **Rent Commencement Date** shall be December 1 of the year that is one year after commencement of full operations of the Project. For sake of clarity, if the Project starts Full Operations in August 2019, then the Rent Commencement date shall be December 1, 2020. If applicable, Base Rent will be prorated for any partial month prior to the Lease Commencement Date and any partial month at the end of the Lease Term on the basis of the actual number of days in such month. Base Rent shall be in the amounts set forth in the Rent Schedule attached hereto as **Exhibit "F"**, and shall be escalated by three percent (3%) annually, in accordance with the Rent Schedule.

**5.2 Expenses.** Within thirty (30) days of Landlord's written request, Tenant shall provide such documentation and or invoices evidencing the Expenses as Landlord may require.

**5.3**     **Flow of Funds.** Revenues, including investment income on all funds, will be deposited daily with the Bond Trustee into the Revenue Fund and applied monthly on the third business day prior to the first day of each month in the following order of priority:

(a)     To the Facility Operator for deposit in its O&M Fund the amount specified in the Annual Budget for the following month's Operating and Maintenance Expenses, including Expenses (as defined herein) together with such additional amounts for other necessary expenditures not included in the Annual Budget requested in writing by an Authorized Representative of the Asset Manager, not to exceed ten percent (10%) of amount set forth in the Annual Budget, which amount will be set forth in a certificate of the Asset Manager delivered to the Bond Trustee;

(b)     Into the Bond Fund (commencing 12 months before the applicable first principal payment and sinking fund payment), the amount required to bring the balance in each Bond Principal and Interest Account equal to the next principal and interest payment and sinking fund payment due on the Bonds divided by 12;

(c)     Into the Rebate Fund the amount the Issuer is obligated to pay pursuant to the Trust Indenture in accordance with the Tax Certificate;

(d)     Into the Debt Service Reserve Fund, 1/36th of the amount required to bring the balance in Debt Service Reserve Account equal to the Debt Service Reserve Requirement;

(e)     Into the Repair and Replacement Fund, an amount required to bring the balance in the Repair and Replacement Fund to be equal to the Minimum Repair and Replacement Fund Balance requirement (defined below);

(f)     Into the Subordinated Fee Account, the Subordinated Asset Management and Operator Fees due for the period;

(g)     Into the Ground Lease Payment Account, 1/12th of the Base Rent due in that Fiscal Year;

(h)     Into the Extraordinary Expense Account an amount required to bring the balance in the Extraordinary Expense Account to be equal to the Minimum Extraordinary Expense Account Balance requirement;

(i)     Into the Operating Reserve Fund an amount required to bring the balance in the Operating Reserve Fund to be equal to the Minimum Operating Reserve Fund Balance requirement (defined below); and

(j)     Into the Surplus Fund, an amount leftover after each of the prior transfers to be released to the College in the amounts, at the times, and upon the terms and conditions specified in the Trust Indenture.

Terms not defined in this section of the Lease shall have the meaning set forth in the Trust Indenture entered into by PFA as part of the Permitted Financing.

**5.4 Subordinated Fees Payment Shortfall.** If the Subordinated Asset Management Fee or the Subordinated Facility Operator Fee are not paid in full during any year of the Lease, the payment shortfall shall be deferred and paid with the Subordinated Asset Manager Fee and the Subordinated Facility Operator Fee, as applicable, in the following year of the Lease to the extent that there are sufficient funds. The payment shortfall shall accrue interest at the rate of six percent (6%) simple interest. If the payment shortfall continues for a period of five (5) years, then the payment of Base Rent shall be subordinated to the payment of the Subordinated Asset Management Fee and the Subordinated Facility Operator Fee until such time as the payment shortfall is paid in full.

**5.5 Accounting.** Within thirty (30) days of Landlord's written request, Tenant shall provide to Landlord an accounting of the application of the Revenues, in such form and content as Landlord may reasonably require.

## **ARTICLE 6 ALTERATIONS OF THE IMPROVEMENTS**

**6.1 Alterations.** Except as provided in Section 6.2, after Substantial Completion of the Improvements, Tenant or PFA may from time to time make such alterations, additions, improvements, and replacements to the Premises as it from time to time determines to be appropriate.

### **6.2 Alterations of Completed Improvements.**

(a) **Minor Alterations.** Tenant or PFA may alter and make leasehold improvements for Occupants in areas of the Premises not visible from outside the building in which such Occupants reside or conduct business at any time during the Lease Term in Tenant or PFA's discretion.

(b) **Major Alterations.** After a Certificate of Occupancy has been issued for the Premises, the Tenant or PFA shall not make or permit to be made any substantial alteration of, addition to or change in the exterior facade (which shall include, without limitation, entrance locations, materials, windows and cornices forming a part of such facade) or the landscaping or other exterior features of the Improvements that are visible from outside the building to which such Certificate of Occupancy relates or otherwise materially alter the Premises in a manner contrary to the use and design features set forth in the Construction Documents ("**Major Alterations**") without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any request for such consent shall be accompanied by graphic, financial and other materials sufficient to illustrate the nature and extent of the proposed alteration, its impact, if any, upon improvements existing upon or planned for under the Construction Documents on other portions of the Campus.

**6.3 Construction of Alterations.** All alterations and additions made in accordance with Section 6.2 shall be constructed in a good and workmanlike manner, with good quality new materials and equipment as customary in the reasonable application of industry standards, in compliance with Applicable Law, and shall be completed with due diligence. If Tenant or PFA shall fail to comply with the foregoing requirements, the Landlord may, within a reasonable time after its discovery thereof, direct in writing that the Tenant or PFA so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended without the prior approval of the Landlord. The Tenant or PFA shall promptly comply with such directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition or extension until such directive is complied with.

## **ARTICLE 7 TAXES, ASSESSMENTS, AND UTILITIES**

**7.1 NSC's Tax Exemption.** During the Lease Term, Landlord, exclusively, shall have and own fee simple title to the Land. Under current law in the State of Nevada, the Parties believe, but do not warrant to the other Party, that the Land will be exempt from all real and tangible personal property ad valorem taxation pursuant to NRS 361.157(c).

Further, the Parties acknowledge and agree that it is the intent and expectation of the Parties that Tenant or PFA's leasehold interest in the Land, the Premises, the Improvements, and other rights, title and interest under this Lease shall not be subject to real and/or tangible personal property ad valorem taxation provided, however, that the Parties understand and agree that an exemption from real and/or tangible personal property ad valorem taxation is or may become unavailable and PFA makes no representation or warranty regarding the potential exception or exemption and no Party is relying upon PFA to undertake or refuse to undertake any action in any manner in relation to any real or potential exception or exemption.

**7.2 Right to Contest Taxes.** If the imposition of any Tax shall be deemed by Tenant or Landlord to be improper, illegal, or excessive, Tenant may, in its own name, dispute and contest the same and, in such event and to the extent permitted by Applicable Laws, any such Tax need not be paid until adjudged to be valid; provided, however, Tenant shall in writing first notify Landlord of such dispute and contest and shall comply with the requirements of any Leasehold Mortgage concerning the contest of taxes. Unless so contested, any Tax shall be paid by Tenant or Landlord, as applicable, within the time provided by Applicable Laws, and if contested, any such Tax shall be paid before the execution upon or foreclosure of any lien for any Tax on the Premises. Landlord shall cooperate with Tenant's reasonable requests in any such Tax dispute or context. PFA shall have the same rights pursuant to the PFA Sublease provided, however, that Tenant shall not dispute or contest any Tax without PFA's prior written consent, which may be withheld in PFA's sole and absolute discretion.

**7.3 Tax on Receipt of Rent.** Landlord shall be solely responsible for the payment of any tax, assessment, charge or excise on, attributable to, or measured by the Base Rent or by any other payments received by Landlord under this Lease.

**7.4 Utilities.** Tenant or PFA shall, during the Lease Term, pay and discharge punctually, as and when the same shall become due and payable all rents and charges for sewer, water, steam, heat, gas, hot water, electricity, light, and power, and other service or services, furnished to the Premises during the same period (hereinafter referred to as “**Utility Expenses**”). Notwithstanding the above, Residents or Commercial Sub-tenants may be separately metered for any or all utilities and shall directly pay said Utility Expenses to the extent separately metered during the terms of their Sub-subleases. Landlord shall reasonably cooperate in obtaining necessary easements for such utilities to be provided to the Premises.

## **ARTICLE 8 ADVERTISING AND MARKETING; OPERATOR**

Tenant shall be responsible and shall have sole authority for marketing and leasing of the Premises. To the extent that Tenant has entered into the PFA Sublease, PFA, its agents or assigns, shall assume Tenant’s responsibilities pursuant to this Article 8. Landlord hereby covenants and agrees, however, as follows, which covenants and agreements shall survive as obligations of the original Landlord following any Transfer pursuant to Article 26 hereof:

**8.1 Advertising/Marketing.** The Parties shall work in good faith to facilitate the rental and leasing of the Premises, and Landlord agrees that Tenant shall be the advertiser permitted by NSC for student housing. Tenant may, throughout the Lease Term, market the Premises to NSC Students and other Permitted Residents as On-Campus Housing. Tenant shall be entitled to advertise the Project as On-Campus Housing.

(a) Tenant may, from time to time, present to NSC advertising and marketing content for NSC web sites and other media used by NSC or its licensees to advertise On-Campus Housing and/or written content and images intended for email distribution. NSC agrees to place such content on its web site and to distribute by email or comparable means as applicable to all NSC Students, subject to reasonable restrictions on such content.

(b) NSC will allow Tenant, from time to time, to place advertising and marketing content in NSC’s written materials and mailings, signage, and similar media, subject to reasonable restrictions on such content.

(c) NSC shall allow Tenant to advertise on Campus kiosks and within student centers and any other locations on Campus where housing is offered or advertised.

(d) The Parties agree that the Premises shall be marketed as campus student housing.

(e) Information regarding the Project will be included in NSC's catalogues and informational brochures distributed to NSC Students, at the time of their next printing and printing for any subsequent Lease Year, and on NSC's web sites and other media outlets advertising and marketing housing.

(f) Nothing in this Lease shall prohibit Tenant from conducting normal and ordinary marketing activities typically conducted by Off-Campus Housing operators.

(g) Tenant and NSC will coordinate their efforts and cooperate with each other to market and make the Project housing properties available to participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Tenant, subject to the terms and provisions of Section 9.9 hereof.

(h) Tenant shall be entitled to actively participate in transfer student orientation sessions, welcome week activities and other student orientation sessions or similar events for purposes of marketing the Project, subject to reasonable rules and regulations promulgated by NSC.

(i) Neither Party shall make any claim or statement that is disparaging to the other Party or to the Project.

**8.2 Asset Manager and Facility Operator.** Prior to the commencement of operations, Subtenant and Tenant shall enter into the Asset Management Agreement, and Tenant, as Asset Manager, shall enter into the Facility Operating Agreement with Facility Operator. The Facility Operating Agreement, any amendment thereto, or any replacement thereof is and will be subject to the approval of NSC, which approval may not be unreasonably withheld, conditioned, or delayed. Initially, Landlord acknowledges that (i) Tenant will be the Asset Manager, and NSC consents to the engagement of Tenant as Asset Manager, and (ii) American Campus Communities will be the initial Facility Operator, and NSC consents to the engagement of American Campus Communities as Facility Operator.

## ARTICLE 9

### RESTRICTION ON CERTAIN STUDENT HOUSING DEVELOPMENTS

**9.1 Housing Development Restriction.** Except for additional phases of student housing to be developed by Developer with Landlord, Landlord agrees that it shall not develop or construct or participate in the development, financing or construction of any Restricted Housing (defined below in Section 9.3) from the Effective Date of this Lease until seven (7) years following the issuance of a Certificate of Occupancy within the Project ("**Occupancy Date**"). The foregoing covenant is referred to herein as the "**Housing Restriction**".

**9.2** Intentionally Omitted.

**9.3 "Restricted Housing" Defined.**



(a) As used herein, “**Restricted Housing**” means any Dwelling designed, intended or used for NSC Students, or other students of NSHE institutions.

(b) “**Dwelling**” means a building or portion thereof designed or used for residential occupancy by an individual, family, group of unrelated individuals, or by persons residing in a community residence, and includes factory-built homes, manufactured homes, one-family, two-family and multiple-family dwellings, apartments, flats, and community residences, and any other building wherein human beings may be lawfully housed such as a “boarding house”, “lodging house”, “fraternity”, “sorority”, “dormitory”, or any other group living arrangement for unrelated individuals.

9.4 Intentionally Omitted.

9.5 Intentionally Omitted.

9.6 **Memorandum of Housing Restriction.** Tenant may, at Tenant’s sole cost, record a memorandum of the Housing Restriction against any property now owned or hereafter acquired by the Landlord or Affiliate of Landlord for the benefit of NSC and located within the geographical limits described in Section 9.3. PFA shall also have the right to record a memorandum of the Housing Restriction.

9.7 **State Campus Village Information.** Landlord acknowledges that Tenant is making a significant investment to develop the Project based, in part, upon the expectation that Tenant will have the ability to easily disseminate its marketing information to NSC Students and prospective NSC Students who have applied for admission to NSC, potential participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Landlord.

9.8 **Leasing Policies of NSC.** Except as explicitly provided in this Lease, NSC shall not implement any policy or take any action which restricts or discourages NSC Students from residing at the Project in any material way.

9.9 **Permitted Residents.** Tenant and PFA shall have the right to market and sub-lease the Residential Premises only to NSC Students and the following additional persons (“**Permitted Residents**”):

- (a) Transfer students or former NSC Students applying for admission or re-admission to NSC;
- (b) NSC faculty and staff;
- (c) Participants in summer camps, seminars, and conferences operated by NSC or others at the Campus;
- (d) Participants in summer camps, seminars, and conferences independently contracted by Tenant;

(e) Students enrolled in other educational institutions including, but not limited to, University of Nevada Las Vegas, College of Southern Nevada, community colleges, and other public colleges and universities;

(f) To the extent that the Project contains units dedicated to married student housing, the spouse and children of Permitted Residents identified in subparts (a), (b), and (e) above for such portions of the Project.

(g) to any other individual with respect to any vacancies in the Premises as of July 1 of any year subject to the requirement that any Sub-subleases covered by this Section 9.9(g) are terminable on or before the following June 30 and such premises are then made available for individuals described above in this Section 9.9; and

(h) to any other individual without regard to the restrictions set forth in Section 9.9(g); provided, the total number of Residents who qualify for residency based solely on this Section 9.9(h) shall not exceed five percent (5%) of the total number of Beds.

Notwithstanding anything in this Lease to the contrary, the foregoing restriction on Tenant and PFA's right to enter into Sub-subleases shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

**9.10 Supplemental Advertising and Marketing.** Nothing in this Lease is intended or shall be construed as limiting or restricting Tenant from engaging in any additional marketing or advertising of the Premises in its sole discretion.

## **ARTICLE 10 POLICE AND SECURITY SERVICES**

**10.1 Outdoor Patrols.** The Landlord may provide police protection under agreements with other NSHE institutions or the City of Henderson (the "***Police***"). During such periods as the Landlord has agreements for Police services, Landlord shall cause the Police to patrol the outdoor common areas of the Premises in substantially the same manner and frequency as such patrols are conducted at other Campus buildings and facilities. Landlord agrees to provide Tenant and PFA with a copy of all agreements relating to Police within three (3) days of the effective date of such agreement(s) and to notify Tenant and PFA of any amendment, modification, termination or non-renewal of such agreement(s) within three (3) days of the effective date of such event.

**10.2 Supplemental Services.** If requested by Tenant, Landlord will cause the Police to provide additional services ("***Supplemental Services***") such as internal patrols, security at events, or other situations with respect to which Tenant requests police presence on the Premises. If Tenant requests such Supplemental Services, the Tenant understands that the Police will charge Tenant a fee, annually or on a more frequent schedule, determined in a

manner similar to that used to set the fee paid by other residential or commercial establishments on-Campus.

**10.3 Private Security Services.** Tenant shall have the right in its sole discretion, but no obligation, to provide additional unarmed private security forces to supplement those provided by the Police and or the City of Henderson Police force, at Tenant's sole cost and in compliance with all Applicable Laws. Prior to engaging any private security, Tenant shall first obtain the written consent of Police.

## **ARTICLE 11 PROHIBITED USES**

**11.1 Prohibited Uses.** Notwithstanding any other provision of this Lease to the contrary, no portion of the Project shall be used for the following purposes:

(a) Gaming, casino gambling, slot machines, video or other electronic gambling devices, except that the sale of State lottery tickets is permitted if the State of Nevada authorizes a State lottery.

(b) The sale of firearms, explosives or lethal weapons sales or establishments;

(c) An adult theater, adult bookstore, adult video store or other establishment which shows, previews, or prominently includes, as a part of its stock-in-trade for sale, rental or other consumption or entertainment, or which otherwise conspicuously displays, advertises, or conspicuously promotes for sale or rental: (a) movies, films, videos, magazines, books, discs or other medium (whether now or hereafter developed) that are rated "NC-17" by the Motion Picture Association of America, Inc. (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature; or (b) sexually explicit games, toys, devices, or similar merchandise.

(d) The sale, dispensing or use of marijuana or marijuana-infused products (as defined in NRS 453A.112), whether for medicinal or other purposes.

(e) An adult nightclub, or any other establishment which offers entertainment or services by nude, topless or partially clothed male or female persons or which is designed to arouse the prurient interest in another.

(f) A tattoo parlor, body piercing shop, and so-called head shops (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs).

(g) Any purpose that violates Applicable Law, or in such a manner as to constitute a nuisance.

## ARTICLE 12 SUB-SUBLEASES

**12.1 Sub-subleases.** PFA, and its successors and assigns, shall have the right, without the consent or approval of Landlord, to enter into, modify, and terminate any Residential Sub-sublease for all or any part of the Premises, and to enter any Commercial Sub-sublease for all or any part of the Premises with the Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. PFA shall have the right to modify or terminate any Commercial Sub-sublease without the Landlord's prior written consent. Each Sub-sublease shall require the Sub-subtenant to attorn (i) to Landlord in the event of the termination of this Lease or (ii) to any Leasehold Mortgagee that becomes the Tenant under a New Lease prior to the expiration date of the Sublease.

**12.2 Approval of Sub-sublease Form.** In its capacity as an institution of higher education, NSC is subject to certain affirmative obligations and regulations under federal and state law that apply to institutions of higher education ("**Institutional Restrictions**"). Some Institutional Restrictions may be applicable to the Premises as a result of NSC being the fee owner of the Land. The present Institutional Restrictions, also known as the NSHE Board of Regents Policies Related to Student Housing, is attached as **Exhibit G**, which may be amended from time to time. The Institutional Restrictions shall be incorporated into the Sub-subleases between PFA and a NSC Student. PFA shall incorporate such provisions in its form of Sub-sublease agreement unless PFA reasonably and in good faith questions the necessity of such provision or the applicability of the Institutional Restrictions to the Premises. Either Party may submit to arbitration in accordance with Article 28 the issue of whether such provisions are reasonable and are reasonably necessary. Landlord shall have the right to review the form or forms being used by Tenant and PFA, as well as the right to review Subleases and Sub-subleases then in effect, at any time and from time to time to confirm that the form or form contain all provisions required by this Section 12.2.

**12.3 Landlord's Right to Evict Certain Sub-subtenants.** In the event that any Institutional Restrictions require that a Sub-subtenant who is a NSC Student be evicted from or relocated within the Premises, NSC shall notify Tenant and PFA of such fact by written notice ("**Sub-subtenant Action Notice**"). Such notice shall identify the Resident and contain a summary explanation of the reason for his or her eviction sufficient to provide the basis for a judicial eviction proceeding but subject to any privacy limits of Applicable Law (including but not limited to the Family Educational Rights and Privacy Act ("**FERPA**")). The Sub-subtenant Action Notice will be signed by the Dean of Students, General Counsel or their designees, and shall state that NSC has afforded the Sub-subtenant any and all due process rights required under Applicable Law to which he or she may be entitled to challenge the grounds for such Sub-subtenant Action Notice. Tenant and PFA shall use commercially reasonable efforts to cause the Sub-subtenant described in the Sub-subtenant Action Notice to be evicted or relocated, as directed in the Sub-subtenant Action Notice; provided, so long as the applicable Sub-sublease contains the provisions required hereunder, Landlord shall reimburse Tenant and PFA for any costs incurred and hold Tenant and PFA harmless against any claim by the Sub-subtenant that the eviction was wrongful or that the circumstances alleged in the Sub-subtenant

Action Notice were untrue, incomplete or libelous. Landlord agrees that Tenant and PFA shall have no obligation to verify the facts alleged by NSC in the Sub-subtenant Action Notice and are entitled to rely on the facts and allegations contained in the Sub-subtenant Action Notice. NSC will provide any affidavit required and make available witnesses if necessary in connection with any judicial proceeding, and Tenant may voluntarily dismiss any action if NSC shall fail to do so on a timely basis. Tenant and PFA shall reimburse Landlord for any costs incurred and hold Landlord harmless against any claim arising out of the Tenant or PFA's failure to evict a Sub-subtenant pursuant to a Sub-subtenant Action Notice.

**12.4 Omitted.**

**12.5 PFA's Rights to Enforce Sub-subleases, Control the Premises, and Determine Rental Rates.** Except with respect to actions required in response to a Student Action Notice, Landlord shall not interfere with PFA's decisions with respect to the enforcement of Sub-subleases, actions taken to prevent damage to the Premises and to maintain the safety and security of the Premises and the persons and property located thereon. The Landlord shall have the right to require that the Facility Operator reduce the established rental rates for the Project if the debt service coverage ratio of the Permitted Financing as reflected in the annual budget is greater than 1.50 times debt service, as set forth in Section 3(b)(iii)(6) of the Facility Operating Agreement and as provided in the Indenture, provided that the funds in the Indenture are fully funded. The reduction in rental rates shall not reduce the debt service coverage ratio to less than 1.50 times debt service.

**12.6 Nondiscrimination.** Landlord, Tenant, and PFA shall comply with all Applicable Laws governing equal employment opportunities, immigration, and non-discrimination. To that end, Tenant and PFA shall not unlawfully discriminate in the conduct and operation of its business at the Project against any person or group of persons because of race, color, religion, national origin, citizenship, sex, gender identity, sexual orientation, age, or disability.

**12.7 Nondisturbance.** Upon request therefor by Tenant or PFA, Landlord shall execute and deliver to PFA a subordination, attornment, and nondisturbance agreement, in form and substance reasonably acceptable to Tenant and Landlord, which shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE 13  
PARKING**

The Tenant will provide parking at the Premises in compliance with applicable codes.

**ARTICLE 14  
MAINTENANCE, OPERATION, AND MANAGEMENT**

**14.1 Maintenance.** Tenant shall, solely from Revenues, keep and maintain in good order and repair the Premises, both interior and exterior, structural and non-structural. All repairs, replacements, and renewals shall be made promptly and be substantially equal in

quality to the original Improvement Work. Tenant waives any right created by any law now or hereafter in force to make repairs to the Premises at Landlord's expense, it being understood that Landlord shall not in any event be required to make any alterations, restorations, replacements, changes, additions, improvements, or repairs, unless required to do so by separate agreement. The Premises shall, at all times comply with all requirements of this Lease except to the extent the same may be inapplicable during construction, and make all necessary repairs thereto, in a timely and workmanlike manner in accordance with industry standards.

**14.2 Project Reserves.** Unless a repair and replacement fund is established in a Financing Agreement to which Tenant or PFA is a party, with respect to the Improvements:

**(a)** Tenant shall:

**(i)** During the fifth (5<sup>th</sup>) Lease Year, cause to be conducted a study of the reserves ("Reserve Study") required to repair, replace and restore the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore and deliver a copy of the Reserve Study to Landlord;

**(ii)** At least annually thereafter, review the results of the Reserve Study with Landlord to determine whether those reserves are sufficient; and

**(iii)** At least annually thereafter, make any adjustments to Tenant's funding plan which the Tenant deems necessary to provide adequate funding for the required reserves ("Annual Updates").

**(b)** The Reserve Study must include, without limitation:

**(i)** A summary of an inspection of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore;

**(ii)** An identification of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore which have a remaining useful life of less than 30 years;

**(iii)** An estimate of the remaining useful life of each major component of the Premises that Tenant is obligated to maintain, repair, replace or restore;

**(iv)** An estimate of the cost of maintenance, repair, replacement or restoration of each major component of the Premises during and at the end of its useful life; and

**(v)** An estimate of the total annual contribution to the Project Reserve Fund that may be necessary to cover the cost of maintaining, repairing, replacement or restoration of the major components of the Premises, after subtracting the existing reserves of Tenant as of the date of the Reserve

Study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

- (c) Tenant shall, beginning in the fifth (5th) Lease Year and in each Lease Year thereafter, create and maintain a fund for the purpose of reserving sufficient cash available for maintenance, repair, replacement or restoration of each major component of the Premises that is anticipated by the Reserve Study and the Annual Updates to require maintenance, repair, replacement or restoration during the remainder of the Lease Term (the “***Project Reserve Fund***”) and make an annual transfer to the Project Reserve Fund in an amount sufficient to cover all such costs of maintenance, repair, replacement or restoration.
- (d) Any reserve amounts held by a Leasehold Mortgagee for the same or substantially similar purposes as described in Section 14.2(c) shall satisfy Tenant’s obligation under this Section 14.2 to the extent such reserves held by the Leasehold Mortgagee shall, under the terms of the Financing Documents, be available only for such similar purposes and shall be available to Landlord upon expiration of the Lease Term.
- (e) Upon expiration of the Lease Term or upon earlier termination of the Lease, such amounts held in the Project Reserve Fund or any comparable reserve fund held by a Leasehold Mortgagee and used to satisfy Tenant’s obligation herein shall be paid over to Landlord.
- (f) Subject to the requirement imposed by a Permitted Financing, if any, Tenant shall be entitled to draw upon the Project Reserve Fund to pay the costs of maintenance, repair, replacement or restoration of each major component of the Premises for which reserves are required by Section 14.2(c). Thereafter, future annual contributions to the Project Reserve Fund will restore the balance in the Project Reserve Fund as necessary to comply with Section 14.2(c).
  - (i) No Landlord consent shall be required with respect to a draw so long as the matter for which such draw is made relates to any maintenance, repair, replacement or restoration which has a cost and is made at a time substantially consistent with the Reserve Study and Annual Updates.
  - (ii) If any maintenance, repair, replacement or restoration is required to be made significantly earlier than contemplated in the Reserve Study or has a cost which is significantly higher than estimated in the Reserve Study, Landlord shall have the right to approve related draws, which approval shall not be unreasonably withheld, conditioned or delayed.
  - (iii) If any maintenance, repair, replacement or restoration as contemplated in the Reserve Study has a cost which is significantly lower than estimated in the Reserve Study, Tenant may reallocate the difference in subsequent years to other maintenance, repair, replacement or restoration of

major components of the Premises for which reserves are required by Section 14.2(c).

(iv) Tenant shall give Landlord 30 days' written notice of any planned draw which notice shall provide sufficient information to reflect that consent by Landlord is not required under this Section 14.2(f) or to enable Landlord to determine whether to give its approval to the draw.

**14.3 Financial Aid.** In the event that NSC Students receive financial aid to pay for housing that is dependent on living in On-Campus Housing, Tenant and Landlord shall work together to develop a process to permit the Premises to qualify for such residence, if allowed by Applicable Law.

**14.4 Signs.** Tenant shall have the right to install and replace, and to permit the installation or replacement by others, of any signs or advertising matter visible from the exterior of the Premises, so long as such signs (i) are approved by Landlord, which approval may not be unreasonably withheld, conditioned, or delayed, and (ii) conform with Landlord's regulations on use of NSC's name and marks. Tenant shall comply with all applicable requirements of Governmental Authorities having jurisdiction and shall obtain all necessary governmental approvals prior to the installation or replacement of any sign or other advertising matter permitted by Landlord.

**14.5 Project Management.** Tenant, as Asset Manager, shall, with funds generated solely from Revenues or funded through the Permitted Financing, operate and staff the Premises, or cause the Premises to be operated and staffed, in a professional manner consistent with the operation of a first-class college housing facility, comparable to those at NSC's peer institutions. In furtherance of such intent and except as otherwise expressly provided in this Lease, Tenant shall in general and whether herein specifically authorized or not, take all actions that Tenant deems necessary, proper or desirable in its business judgment with respect to the ownership and operation of the Premises.

Nothing herein contained shall be deemed or construed by the Parties hereto nor by any third party as creating the relationship of (i) partnership or of joint venture between the parties hereto, or (ii) employer and employee, or (iii) any other relationship other than the relationship of Landlord and Tenant. The Landlord shall have no responsibility for the actions of the Tenant and no control over Tenant's operations other than as explicitly set forth in this Lease.

**14.6 Asset Management Fee.** Landlord acknowledges that Tenant, as Developer, shall be entitled to a fee for services rendered under the Asset Management Agreement. The asset management fee shall be eight percent (8%) of the Revenues (the "**Asset Management Fee**"), with one-half of the Asset Management Fee referred to as the "Subordinated Asset Management Fee", payment of which is subordinated as shown in Section 5.3(f). The Asset Management Fee shall commence on the first day of occupancy of the Premises by a PFA and shall be paid monthly.



**14.7 NSC Food Services.** Tenant will cooperate with and assist Landlord in its study to determine whether to expand food service operations at NSC for the benefit of the Residents, including the possibility of offering food services at the Premises.

## **ARTICLE 15 CONDITION OF LAND**

Tenant acknowledges that it is fully familiar with the Land and its physical condition as of the date hereof. Except for Landlord's obligation to (i) provide reasonable access for ingress, egress, and regress to the Premises, (ii) grant additional easements and access rights and cooperate with Tenant as to other matters pursuant to Section 2.3 above, and (iii) complete other duties as otherwise provided herein, Tenant accepts the Land in its existing condition and agrees that Landlord shall in no event be liable for any latent or patent defects in the Land.

## **ARTICLE 16 RIGHT OF INSPECTION**

Landlord shall at all reasonable times during regular business hours be permitted access to the Premises for the purposes of inspecting the same and generally to do such other work as is deemed necessary to determine Tenant's compliance with this Lease, including, without limitation, the construction of the Improvements. Except in the case of bona fide or apparent emergency or as provided under a Sub-sublease, Landlord shall only be afforded access to the interior of any structure or building situate on the Premises: (a) when accompanied by a representative of Tenant; and (b) after five (5) Business Days written notice by Landlord to Tenant. In exercising its rights hereunder, Landlord shall not unreasonably interfere with the use or occupancy by Tenant, PFA, or any Sub-subtenant or Occupant. In the event of a bona fide or apparent emergency, Landlord may enter at any time and without accompaniment or notice (including forcibly, to the extent necessary), without such entry constituting an eviction of Tenant or a termination of this Lease.

## **ARTICLE 17 ENVIRONMENTAL REPRESENTATIONS, COVENANTS AND WARRANTIES**

**17.1 Representations.** Landlord and Tenant each represent and warrant to the other Party that it has disclosed to the other Party in writing any and all information known to Landlord or Tenant, as the case may be, relating to the environmental condition of the Land.

**17.2 Tenant's Environmental Covenants.**

(a) Tenant and PFA shall not engage in and shall use reasonable efforts to prevent any Sub-subtenant from engaging in operations at or in the Premises which involve the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, release, or threat of release of Hazardous Substances which would require remediation or clean-up to conform to Environmental Laws. Tenant and PFA shall at all times comply with Environmental Laws with respect to substances first coming onto the Land following the

Effective Date and during the Lease Term. Tenant and PFA shall not cause and shall not permit to exist as a result of an intentional or unintentional action or omission on its part (and Tenant and PFA shall use reasonable efforts not to permit to exist as a result of an intentional or unintentional action or omission on the part of any other party), the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping from or about the Land of any Hazardous Substances in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to Environmental Laws.

(b) Nothing contained in this Section 17.2 shall be construed as prohibiting the use on the Land of substances regulated by Environmental Laws that are normally or routinely used in the construction of improvements such as the Improvements or are normally or routinely used in the operation, repair, maintenance, and use of residential and commercial projects, such as fuels, solvents, cleaning materials, paint, and printing materials, so long as the same are used in a manner that complies with Environmental Laws.

## **ARTICLE 18 WARRANTIES AND REPRESENTATIONS**

**18.1** **By Landlord.** Landlord hereby warrants and represents to Tenant as follows:

(a) Landlord has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals, consents, and board or committee actions necessary to authorize Landlord to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken.

(b) The person executing this Lease on behalf of Landlord has authority on behalf of Landlord to execute this Lease and all other documents contemplated hereby. This Lease is a legal and valid obligation of Landlord and is binding upon and enforceable against Landlord in accordance with its terms.

(c) The Land is not subject to any pending or, to Landlord's knowledge, threatened litigation, and Landlord is not subject to any pending or, to Landlord's knowledge, threatened litigation that would or might affect the Land or Landlord's ability to perform its obligations under this Lease.

(d) The consummation by Landlord of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Landlord.

(e) Except as disclosed in the Permitted Exceptions, Landlord is not a party to, or bound by, any indenture, mortgage, deed of trust, loan agreement, restriction, restrictive covenant, or any order or decree of any court or governmental agency, which might adversely affect the Land.

(f) Except for that certain Contract for Services of Independent Contractor dated as of June 26, 2017, by and between the Landlord and Capriati Construction Corporation for grading services on a portion of the Site which includes the Land, Landlord has no knowledge of any condition of or with respect to the Land that would adversely affect the use and enjoyment of the Land by Tenant in accordance with the terms and provisions of this Lease.

(g) As used in this Section 18.1, Landlord's "knowledge" means the actual knowledge of Landlord's (i) Vice President of Finance and Business Operations, or (ii) General Counsel; or any person under the direct supervision of any of them, following reasonable investigation or inquiry.

## **18.2 By Tenant.**

(a) Tenant has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals and corporate or limited liability company actions necessary to authorize Tenant to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken. The person executing this Lease on behalf of Tenant has authority on behalf of Tenant to execute this Lease and all other documents contemplated hereby. This Lease is a legal and valid obligation of Tenant and is binding upon and enforceable against Tenant in accordance with its terms.

(b) Tenant is not subject to any pending or, to Tenant's knowledge, threatened litigation that would or might affect Tenant's ability to perform its obligations under this Lease.

(c) The consummation by Tenant of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule, or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Tenant.

## **ARTICLE 19 TITLE TO IMPROVEMENTS**

Notwithstanding anything set forth or implied hereunder, during the Lease Term, Landlord shall have and own fee simple title to the Land, subject to the Leasehold Estate and interests of Tenant pursuant to this Lease, the PFA Sublease, and to such Sub-subleases as are authorized hereby. Upon the termination of this Lease, or the end of the Lease Term, whatever date comes first, title to the Improvements shall vest solely in Landlord, including all fund balances, except for the extraordinary expense fund balance, related to the Permitted Financing.

## **ARTICLE 20 MECHANICS' LIENS**

The recording of a mechanic's lien against title to any part of the Land, the Leasehold Estate of Tenant, any Subleasehold Estate, or the Improvements shall be a Tenant Event of Default hereunder if not timely cured as allowed hereunder. Tenant shall use commercially reasonable efforts to avoid the recording of any and all mechanics' liens against the Land or the Leasehold Estate of Tenant or Subleasehold Estate and shall obtain a lien waiver from the General Contractor upon completion of the Improvement Work, in a form and substance reasonably acceptable to Landlord and in compliance with the requirements of NRS 108.2457.

Tenant, PFA, or its construction contractor shall obtain a surety bond in the amount of 150% of the amount of the construction contract. Tenant shall record the surety bond with the Clark County Recorder's Office before the date on which it Commences Construction, and shall comply with the notice and other requirements set forth in NRS 108.2415.

Tenant shall cause any claim of mechanics' lien arising by, through or under Tenant which purports to lien the estate of Landlord in the Premises to be removed or bonded off prior to the filing of any action to enforce such lien, or any other execution or enforcement of such lien. In the event that Tenant permits such liens to be recorded, foreclosed or executed on, Landlord may, but shall not be obligated to, pay such lien or liens in full, or cause the same to be removed of record by causing the lien or liens to be bonded. Any reasonable expenses incurred by Landlord in furtherance of Landlord's rights under this Article 20 shall be paid by Tenant to Landlord. Tenant may contest the validity of any such lien or claim by posting a bond or other surety satisfactory to Landlord in the full amount thereof, but upon final determination of such contest, Tenant shall pay any remaining judgment, decree or lien and cause the same to be released of record without cost to Landlord.

## **ARTICLE 21 CASUALTY**

**21.1 Tenant's Obligation to Repair.** Except as provided in this Lease, Permitted Financing, or in any Leasehold Mortgage, in the event of damage to or destruction of Premises or the Improvements, the funds received by Tenant from property insurance acquired pursuant to Article 22 shall be made available to the extent needed to effect such repair and reconstruction of the structure or improvement so damaged or destroyed to substantially its condition prior to said damage or destruction, or, if such repair or reconstruction is determined by Tenant to be not commercially feasible due to the age, design, use, extent of damage or the type of construction, or other aspect of the Improvements, Tenant may, in its reasonable discretion, effect repair and reconstruction so as to preserve any portions of the Improvements that have not been substantially damaged or to remodel or revise the structure of the Improvements, or Tenant may raze the Improvements or any part thereof. Notwithstanding the foregoing, in the event that Tenant determines that any repair or reconstruction is not commercially feasible and/or that the continued operation of the Premises is not commercially feasible, Tenant may, at its option, terminate this Lease by written notice thereof to Landlord,

whereupon Tenant shall be required to raze or repair the remaining Improvements to the extent necessary to protect them against further deterioration as a result of such casualty, and any insurance proceeds remaining following satisfaction of all sums secured by all Leasehold Mortgages and payment of any sums required to preserve or raze the Improvements shall be retained by Tenant. Tenant's restoration activities shall be subject to the following requirements and conditions:

(a) The restoration shall create a building of substantially the same (or greater) floor area and number of Beds as were contained in the damaged building; provided that Tenant shall be entitled to make such changes in the Improvements as Tenant determines are desirable to recognize changes that have occurred in this type of building since the original construction of the Premises and trends that are then occurring therein.

(b) Any material change to any work set forth in the Construction Documents for the restoration shall be subject to the review and approval of Landlord in accordance with the terms and provisions of Article 6 hereof, which approval shall not unreasonably be withheld, conditioned or delayed.

(c) Landlord acknowledges that, notwithstanding anything set forth or implied herein to the contrary, Landlord has no ownership right or interest in the proceeds of the insurance acquired by Tenant pursuant to Article 22.

**21.2 Prompt Repair.** If Tenant, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild any Improvements, or other property as hereinabove provided, the same shall be effected at Tenant's cost and expense but only to the extent of insurance proceeds and other amounts available to Tenant as above provided and subject to the provisions of Article 22 and the provisions of any Leasehold Mortgage. Subject to the time required for collecting insurance proceeds, redesigning, and obtaining governmental approvals therefor, obtaining necessary financing and Unavoidable Delays, Tenant shall use commercially reasonable efforts to promptly commence and complete such repair, replacement, reconstruction, or rebuilding to full completion.

**21.3 Lease Continuance.** This Lease and the Lease Term shall not terminate or be terminated because of damage to or destruction of the Improvements, except as expressly provided in this Lease. Tenant's obligation to pay Rent under this Lease shall be equitably abated during the period of any repair and/or reconstruction by Tenant pursuant to this Article 21.

## **ARTICLE 22 INSURANCE AND INDEMNIFICATION**

Before commencing construction of any Improvements, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect during the term of this Lease, at no cost to Landlord, the following insurance relating to the Premises:

**22.1 Liability Insurance.** Tenant shall purchase and maintain and keep in effect (or cause to be purchased and maintained and kept in effect) at all times during the Lease Term insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance, such that the total available limits will not be less than \$5,000,000.00 per occurrence, which may be satisfied by any combination of a primary commercial general liability and excess liability or umbrella liability insurance policy, naming Landlord and any Leasehold Mortgagee as an additional insured. The coverage afforded the additional insured shall be primary and shall apply to loss prior to any coverage carried by Landlord. Any insurance or self-insurance maintained by Landlord shall be in excess of Tenant's commercial general liability insurance coverage and shall not contribute with it. Certificates of insurance shall include a copy of the endorsement evidencing additional insured status. The policy shall include coverage for:

- (a) Bodily injury
- (b) Broad form property damage (including completed operations)
- (c) Personal injury
- (d) Products and completed operations (this coverage shall extend for one year past the actual completion of construction of all Improvements)

**22.2 Workers' Compensation Insurance.** Tenant shall purchase and maintain and keep in effect at all times during the Lease Term workers compensation and employer's liability insurance as required by the State of Nevada Workers Compensation statutes as follows:

- (a) Workers Compensation (Coverage A) Statutory
- (b) Employers Liability (Coverage B)
  - (i) \$500,000 each accident
  - (ii) \$500,000 each employee/disease
  - (iii) \$1,000,000 policy limit/disease
  - (iv) This policy shall include endorsement for All State coverage for state of hire.

**22.3 Automobile Liability Insurance.** If applicable, Tenant shall purchase and maintain and keep in effect at all times during the Lease Term commercial automobile liability insurance, with minimum limits of \$1,000,000 per occurrence combined single limit, to include non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add Landlord as an additional insured and shall stipulate that

the insurance shall be primary, and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant.

**22.4 Property Insurance.** Tenant shall maintain and keep in effect (or cause to be maintained and kept in effect) at all times during the Lease Term insurance on the Improvements against special causes of loss form coverage. Such insurance shall be written on a replacement cost basis in the amount of the full replacement cost of the Improvements (but excluding the value of roads, foundations, surface parking areas, and similar improvements) subject, however to commercially reasonable sub-limits for buildings of this type. Tenant shall, periodically and at its expense, but not less often than every 5 years during the term hereof, engage a consultant reasonably satisfactory to Landlord, to perform a detailed study of the cost to reconstruct the Premises for purposes of determining the total insurance coverage required. During any period while the Premises is being constructed, the insurance required pursuant to this Article 22 shall be in the form of a builder's risk policy, to be provided by either Tenant or the General Contractor, equal to the replacement cost value of each building at the completion of construction.

(a) The builder's risk policy referred to above shall be special causes of loss form insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Improvements and shall also insure finished products. Coverage shall also cover the interests of Landlord, Tenant, the General Contractor and the Contractors and construction subcontractors in the buildings while under construction and the building materials on site but not yet attached to or incorporated in the building with respect to the Improvements, but it will not cover any machinery, tools, equipment, appliances, or other personal property owned, rented or used by Tenant, the General Contractor, or any subcontractor in the performance of the construction work on the Improvements, which will not become a part of the completed Premises.

(b) The property insurance obtained under the builder's risk policy shall provide special causes of loss form coverage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, windstorm, false work, testing and startup, temporary buildings, and debris removal including demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for the Project's design professionals and the General Contractor for services and expenses required as a result of such insured loss. The builder's risk insurance shall include physical loss or damage to the construction work on the Improvements, including materials and equipment in transit, on the Land or at another location as may be indicated in the General Contractor application for payment and approved by Tenant.

(c) As to the builder's risk insurance policy, Tenant or the General Contractor, as applicable, shall be responsible for the deductible of each loss and shall retain responsibility for any loss not covered by the builder's risk policy.

**22.5 Evidence of Insurance.** Upon the Lease Commencement Date, and if requested by Landlord, no more than once annually thereafter, Tenant shall deliver to Landlord copies of the insurance policies required by this Article 22, certificates of insurance and any additional documentation reasonably requested by Landlord (including, without limitation, policy endorsements) to assure compliance with the requirements of this Article 22, which shall identify this Lease and include copies of endorsements naming Landlord as an additional insured for general liability coverage and auto liability coverage as to acts and omissions of Tenant and others for which Tenant is responsible under Applicable Laws and as to all liability coverages shall stipulate that Tenant's insurance shall be primary and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant. The certificates, insurance policies, and endorsements required by this Article 22 shall contain a provision that coverages afforded will not be cancelled until at least thirty (30) calendar days prior written notice (ten (10) calendar days for nonpayment of premium) to Landlord prior to any lapse, cancellation, or a reduction in coverage. All coverages, conditions, limits, and endorsements shall remain in full force and effect as required in this Lease.

**22.6 Copies and Additional Information.** Landlord shall be provided, upon reasonable request, copies of all policies and endorsements, to the extent available. Each copy of a policy shall include a copy of all endorsements and, if such copy is not a certified copy, shall be accompanied by a letter from Tenant's insurance broker stating that Tenant's insurance carrier will not provide certified copies of insurance policies and endorsements and that the enclosed copy of the policy and endorsements is a true, correct, and complete copy of the respective insurance policy and all endorsements to the best of the broker's knowledge.

**22.7 Tenant's Failure.** In the event that Tenant fails to carry insurance as required under this Article 22, and such failure continues for fifteen (15) calendar days after Tenant's receipt of written notice of such failure from Landlord, then in Landlord's discretion, Landlord may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant upon demand.

**22.8 Claims Reporting.** Any failure to comply with the claims reporting provisions of the policies required to be maintained by Tenant hereunder or any breach of policy warranty shall not affect coverage afforded under the policy to protect Landlord.

**22.9 Self-Insurance.** The policies specified herein may provide coverage, which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Landlord under such policies. Tenant shall be solely responsible for any deductible and/or self-insured retention, which shall be included as Expenses.

**22.10 Payment of Insurance Proceeds.** The policies specified herein may provide coverage, which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Landlord under such policies. Tenant shall be solely responsible for any deductible and/or self-insured retention, which shall be included as Expenses.



**22.11 Landlord's Insurance.** At the earliest possible time after execution of this Lease, and thereafter upon renewal of such policies, Landlord shall deliver to Tenant certificates evidencing Landlord's commercial general liability insurance, automobile liability insurance, property insurance, and workers compensation insurance, with limits of liability as currently maintained by Landlord.

**22.12 Leasehold Mortgage.** So long as the indebtedness, or any part of the indebtedness, secured by the Leasehold Mortgage remains outstanding and unpaid, and the Leasehold Mortgage remains of record, Landlord and Tenant agree that: (a) the Lease shall not terminate or be canceled at any time upon the damage or destruction by fire or other casualty of all, substantially all, or any part of the Premises; (b) the insurance policies required to be maintained pursuant to the Lease shall name Leasehold Mortgagee as an additional named insured and loss payee/ mortgagee, as its interests may appear; (c) the form of such policies and amounts thereof shall at all times be in accordance with the terms of the Leasehold Mortgage, and Leasehold Mortgagee shall be entitled at Leasehold Mortgagee's option to participate in any adjustment, settlement or compromise with respect to any insurance claim; and (d) all proceeds of such insurance policies shall be payable to Leasehold Mortgagee as loss payee (Landlord and Tenant subordinating any right to receive such proceeds to Leasehold Mortgagee), to be applied by Leasehold Mortgagee in accordance with the terms of the Leasehold Mortgage (or other applicable bond documents).

## **ARTICLE 23 CONDEMNATION**

In the event that the entire Premises, or any part thereof, is taken or condemned for a public or quasi-public use or that after any partial taking the remaining portion of the Premises is not sufficient, in Tenant's reasonable judgment, for the successful operation of the Premises, Tenant shall have the right, with the prior written approval of the Leasehold Mortgagee (if there is then a Leasehold Mortgage), to terminate this Lease by written notice thereof to Landlord, in which event both Parties shall be relieved of and from any liability hereunder, except those accrued up to the time of such termination. In the event of any temporary taking or condemnation, Tenant shall be entitled to the entire award of the condemning authority. In the event that the entire Premises or any part thereof is permanently taken by condemnation, Tenant and Landlord shall cooperate to prove in each condemnation proceeding the loss in value, by reason of the taking, of the respective estates of Landlord and Tenant (notwithstanding the termination of this Lease, if any), and Landlord and Tenant shall each be entitled to pursue an award for the values of Landlord's and Tenant's respective interests in the Premises taken in such proceedings, if the condemning authority permits separate awards to be sought by Tenant and Landlord (it being acknowledged that in no event shall the portion of the award allocated to Tenant be less than all amounts secured by all Leasehold Mortgages). In the event that the condemning authority does not permit separate awards to be sought by Tenant and Landlord, then all proceeds and awards which may be payable as a result of condemnation shall, following their receipt by Tenant or any Leasehold Mortgagee, be distributed in the following order of priority:

**23.1 Leasehold Mortgagees.** Notwithstanding anything to the contrary contained herein, in the event of any taking or condemnation (either temporary or permanent), there shall first be paid to Leasehold Mortgagees such amounts as may be required by such Leasehold Mortgages to be paid to such Leasehold Mortgagees, in order of priority and Leasehold Mortgagee shall be entitled at Leasehold Mortgagee's option to participate in any compromise, settlement or adjustment with respect to the Premises.

**23.2 Costs of Collection and Restoration.** From the amount remaining, if any, there shall then be paid to Tenant a sum equal to the costs incurred by Tenant or Leasehold Mortgagee in connection with collection of such proceeds and awards (including, without limitation, all fees for experts, legal fees, costs of surveys, and appraisals, and court costs), and, in the event of a partial taking which does not result in the termination of this Lease, a sum equal to the costs incurred or to be incurred by Tenant in restoring the portion of the Premises remaining to a condition as nearly as possible to that in which the Premises was prior to such taking, in the light of any reduced area thereof, pursuant to a procedure reasonably satisfactory to Leasehold Mortgagee.

**23.3 Remainder.** The amount remaining, if any, shall be paid to Tenant.

## **ARTICLE 24 LEASEHOLD MORTGAGES**

**24.1 Right to Mortgage.** On one or more occasions, Tenant, PFA and every successor and assignee of Tenant or PFA, as applicable, shall, in connection with the development and operation of the Premises only have the right to enter into one or more Leasehold Mortgages and assign, transfer, or encumber this Lease as security for such Leasehold Mortgage ("**Permitted Financing**"). Tenant shall not place or create any mortgage, deed of trust or other lien or encumbrance purporting to affect Landlord's fee interest in the Premises or Landlord's interest in this Lease. Tenant shall not use, provide to others, or rely upon any financial statements, audits, or other documents of NSHE or NSC for the purpose of obtaining any type of advantage with respect to financing the Premises. Tenant shall not be entitled to enter into any Permitted Financing without the prior written approval of the PFA to be held withheld or given in PFA's sole and absolute discretion.

**24.2 Landlord's Approval.**

(a) On or before that date which is fifteen (15) calendar days prior to the execution by Tenant of any Leasehold Mortgage, Tenant shall provide written notice thereof to Landlord, together with a true and correct copy of such Leasehold Mortgage. Landlord shall have the right to review and approve the terms of the Leasehold Mortgage, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Landlord notifies Tenant in writing within ten (10) calendar days of receipt of the Leasehold Mortgage that Landlord does not approve thereof, Tenant shall not be permitted to execute the Leasehold Mortgage. If Landlord approves the Leasehold Mortgage in writing or fails to respond within ten calendar days, Tenant shall be permitted but not required to execute the

Leasehold Mortgage in Tenant's sole discretion substantially in the form originally delivered to Landlord.

(b) Notwithstanding anything to the contrary, Tenant shall not be obligated to commence to perform the Improvement Work unless and until financing acceptable to Tenant is arranged. If financing acceptable to Tenant is not arranged within twelve (12) months after the Effective Date of this Lease, Tenant shall have the option to cancel this Lease by giving written notice of cancellation to Landlord; provided, such cancellation option shall be void if it is not exercised and financing is arranged thereafter. If Tenant can arrange financing only by making changes to the provisions of this Lease other than those provisions designating the length of the Term and the amount of Rent payable under this Lease, Tenant shall have the right to cancel this Lease if Landlord refuses to approve any such change in writing within thirty (30) days after Tenant's request therefor.

### **24.3 Default Notice: Leasehold Mortgage's Right to Cure.**

(a) Landlord, upon providing Tenant any notice of default under this Lease or a termination of this Lease, shall at the same time provide a copy of such notice to PFA, the Leasehold Mortgagee, and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage. No such notice by Landlord shall be deemed to have been duly given unless and until a copy thereof has been so provided to PFA and such Leasehold Mortgagees of which Landlord has received written notice in the manner specified herein.

(b) After such notice has been given to PFA and the Leasehold Mortgagee, PFA and such Leasehold Mortgagee shall have an additional ninety (90) day period or such longer period of time as PFA or the Leasehold Mortgagee reasonably requires to remedy or cause to be remedied any non-monetary default (sixty (60) day period in the case of a monetary default) for remedying (or commencing to remedy and diligently pursuing remedying) any default or causing the same to be remedied (or commencing to remedy and diligently pursuing remedying) as is given Tenant; provided that such ninety (90) day period (sixty (60) day period in the case of a monetary default) shall begin when Landlord delivers a subsequent written notice to PFA and the Leasehold Mortgagee after the period of time given to Tenant to remedy, commence remedying or cause to be remedied the defaults specified in any such notice has expired in accordance with the terms and provisions of this Lease; provided, however, that in the event that any such nonmonetary default is not susceptible to cure by PFA or Leasehold Mortgagee until PFA or Leasehold Mortgagee can gain possession of the Premises, PFA and Leasehold Mortgagee's period of time to commence to cure such default shall be extended until such time as PFA or Leasehold Mortgagee gains possession of the Premises, so long as

(i) during such extended cure period all payments of Rent are paid as required under this Lease (subject to the notice and cure provisions set forth in this Lease), and

(ii) Leasehold Mortgagee or PFA is reasonably diligent in its efforts to gain possession of the Premises. Landlord shall accept such performance by or at

the instigation of PFA or such Leasehold Mortgagee as if the same had been done by Tenant.

(c) Tenant authorizes PFA and Leasehold Mortgagee to take any such action at PFA and Leasehold Mortgagee's option in accordance with Applicable Laws and the terms and conditions of this Lease and does hereby authorize entry upon the Premises by PFA and the Leasehold Mortgagee for such purpose.

(d) Neither PFA nor Leasehold Mortgagee shall have any obligation to remedy or cure any Tenant default.

**24.4 Notice to Leasehold Mortgagee.** Anything contained in this Lease to the contrary notwithstanding, if any default shall occur that may entitle Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of (i) the period of time given Tenant to cure such default as set forth in Article 31, and (ii) the additional period of time given to a Leasehold Mortgagee or PFA to cure such default under Section 24.3, or elsewhere in this Lease, if any, Landlord shall notify ("**Default Termination Notice**") PFA and the Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay Rent, and at least sixty (60) calendar days in advance of the proposed effective date of such termination if such default is not the failure to pay Rent. The provisions of Section 24.5 shall apply if, during such 30- or 60-day Default Termination Notice period PFA or the Leasehold Mortgagee shall:

(a) Notify Landlord of PFA or such Leasehold Mortgagee's desire to cure such Default Termination Notice;

(b) Pay or cause to be paid all Rent and other payments then due and in arrears as specified in the Default Termination Notice and that may thereafter become due during the cure period allowed to PFA and such Leasehold Mortgagee, subject to the notice and cure provisions set forth in this Lease; provided that no such amount shall be required to be paid before the same is due and owing under this Lease; and

(c) Comply or, in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible to being complied with by PFA or such Leasehold Mortgagee and continue to pursue such cure with reasonable due diligence, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by PFA or Leasehold Mortgagee. Notwithstanding any other provision of this Lease, the time allowed PFA or the Leasehold Mortgagee to complete such cure pursuant to this Section 24.4(c) shall be not less than sixty (60) calendar days and shall continue thereafter for so long as is reasonably necessary for PFA or the Leasehold Mortgagee to cure such

nonmonetary requirement which is susceptible of cure by PFA or such Leasehold Mortgagee, including, in the event that PFA or the Leasehold Mortgagee is required to obtain possession of the Premises in order to effect such cure, any period of time reasonably required to obtain such possession (including any time PFA or the Leasehold Mortgagee is stayed or enjoined).

#### **24.5 Procedure on Default.**

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and PFA or Leasehold Mortgagee shall have proceeded in the manner provided for by Section 24.4, the specified date for the termination of this Lease as fixed by Landlord in its Default Termination Notice in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent shall be extended as provided in Section 24.4; provided, PFA or such Leasehold Mortgagee shall, during such extended period:

(i) Pay or cause to be paid the Rent, and other monetary obligations of Tenant under this Lease as the same become due (subject to the notice and grace provisions of Section 24.4) and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting: (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee; and

(ii) Unless PFA or Leasehold Mortgagee is stayed or enjoined from taking such actions, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity.

(b) If at the end of such extended period PFA or Leasehold Mortgagee is complying with this Section 24.5, this Lease shall not then terminate; and the time for completion by PFA or such Leasehold Mortgagee of proceedings pursuant to this Section 24.5 shall continue for the period provided in Section 31.1(b) in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent. Nothing in this Section 24.5, however, shall be construed to require PFA or Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured, and PFA or Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) In no event shall any act or omission of PFA or Leasehold Mortgagee (including, without limitation, the acquisition of Tenant's interest in the Lease and the leasehold estate created thereby in a transaction described in this Section or the taking of possession of the Premises thereon through a receiver or other means) require PFA or Leasehold Mortgagee to assume, or cause Leasehold Mortgagee to be deemed to have assumed, any obligation or liability of Tenant under this Lease, and neither PFA nor

Leasehold Mortgagee shall have any personal liability to Landlord for Tenant's failure to so perform and observe any agreement, covenant or condition of Tenant under this Lease, it being expressly understood and agreed that, in the event of any such failure, Landlord's sole and exclusive remedy shall be to terminate this Lease, without any recourse or claim for damages against PFA or Leasehold Mortgagee. Notwithstanding the foregoing, upon the acquisition of Tenant's Leasehold Estate herein by PFA or Leasehold Mortgagee or its designee or any other permitted purchaser at a foreclosure sale, assignment in lieu thereof, or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided, all monetary defaults have been cured and PFA or the Leasehold Mortgagee, its designee or the successor of either shall proceed to cure any non-monetary defaults.

(d) Notwithstanding any other provision of this Lease, any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage (whether as a result of a default hereunder, a default under a Leasehold Mortgage or otherwise), shall be deemed to be a permitted Transfer or sale not requiring the consent of Landlord, provided such purchaser or assignee of this Lease and of the Leasehold Estate hereby created shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of such Leasehold Estate. No such sale, Transfer, or assignment shall constitute a default or Event of Default under this Lease.

(e) Notwithstanding any other provision of this Lease, no Leasehold Mortgagee or other person acquiring title to Tenant's interest in the Premises through or under a Leasehold Mortgage (including by Transfer in lieu of foreclosure) shall be liable for any loss or damage occurring prior to acquiring such title or subsequent to any assignment of such title. In the event of any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage, (a) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any act or omission of Tenant, (b) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any amendment to this Lease not joined in or consented to by such Leasehold Mortgagee, (c) the Leasehold Mortgagee or purchaser at foreclosure shall not be subject to any offsets or defenses which Landlord has against Tenant and (d) Landlord and such Leasehold Mortgagee shall, each upon written request of the other, reaffirm in writing the validity of this Lease.

**24.6 New Lease.** In the event of the termination of this Lease as a result of Tenant's default or otherwise, Landlord shall, in addition to providing the notices of default and termination as required by Section 24.4, provide PFA and Leasehold Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums that would at the time be due under the Lease but for such termination, and of all other defaults, if any, then

known to Landlord. Landlord shall, upon PFA or Leasehold Mortgagee's written election, enter into a new lease ("**New Lease**") of the Land with PFA or Leasehold Mortgagee or its designee for the remainder of the Lease Term, effective as of the date of termination, at the Rent and upon the terms, covenants, and conditions of this Lease (but excluding any requirements which are not applicable or have been satisfied by Tenant prior to termination), subject only to the conditions of title as the Land is subject to on the date of the execution of the original Lease and such matters arising thereafter to which PFA or such Leasehold Mortgagee has consented to in writing, and to the right, if any, of any parties then in possession of any part of the Land, provided:

(a) PFA or Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) calendar days after the PFA or date such Leasehold Mortgagee receives Landlord's notice of termination given pursuant to this Section 24.6;

(b) PFA or Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums that are at the time of execution and delivery thereof due pursuant to this Lease regardless of such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, that Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and that have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 24.6 or under the New Lease, an amount equal to the funds received by Landlord from the Premises during the period from the date of termination of this Lease to the date of the beginning of the Lease Term of such New Lease;

(c) PFA or Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which PFA or the Leasehold Mortgagee was notified by Landlord's Notice of Termination and that are reasonably susceptible of being cured by PFA or Leasehold Mortgagee or its designee; and

(d) Upon the execution and delivery of a New Lease, the PFA Sublease, all Sub-subleases, and management agreements shall thereupon be assigned and transferred, without warranty or recourse by Landlord to the extent of its interests, if any, to the tenant under the New Lease.

**24.7 No Merger.** So long as any Leasehold Mortgage is in existence, unless Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall otherwise expressly consent in writing or unless this Lease has otherwise been terminated in accordance with its terms, the fee title to the Leasehold Estate of Tenant created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title of the Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise. Landlord and Tenant may not voluntarily

agree to terminate this Lease without the consent of PFA, Leasehold Mortgagee, and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage.

**24.8 Erroneous Payments.** No payments not constituting payments of Rent made to Landlord by PFA or Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and PFA or Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof.

**24.9 Bankruptcy.** In the event either Landlord or Tenant becomes the subject of a proceeding under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect (including any replacement thereof):

(a) Tenant shall not be entitled to reject this Lease without the prior written consent of the Leasehold Mortgagee and every other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; provided that, if the Lease is nevertheless rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee of the Leasehold Estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate and the Leasehold Mortgagee shall have all the rights of the Leasehold Mortgagee under this Section 24.9(a) as if such bankruptcy proceeding had not occurred, unless the Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within sixty (60) calendar days following rejection of the Lease by Tenant or Tenant's trustee in bankruptcy. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Tenant or the trustee in bankruptcy for Tenant in connection with any such proceeding, the rights of the Leasehold Mortgagee to a New Lease from Landlord pursuant to Section 24.6 shall not be affected thereby.

(b) If the Lease is rejected by Landlord or by Landlord's trustee in bankruptcy:

(i) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; and any right to treat this Lease as terminated in such event shall be deemed assigned to such Leasehold Mortgagees, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall be required as a condition to treating this Lease as terminated in connection with such proceeding.



(ii) If this Lease is not treated as terminated in accordance with Section 24.9(b)(i), then this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the term hereof. Thereafter, Tenant or its successors shall be entitled to offset against Rent payable hereunder the amounts of any damages from time to time arising from such rejection or any failure of Landlord to perform its obligations hereunder and any such offset properly made shall not be deemed a default under this Lease. The lien of each Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection with the same priority as it would have enjoyed had such rejection not taken place.

**24.10 Landlord Not Liable for Tenant's Financing.** Tenant acknowledges that Tenant may not qualify for tax exempt financing. Tenant shall be solely responsible for debt repayment relative to any borrowings by Tenant, and Landlord shall not be a participant or guarantor on any such borrowings. Except for the subordination and nondisturbance and attornment agreements and estoppel certificates required by this Lease, Landlord shall not be made a party to any of Tenant's financing documents.

**24.11 Fee Mortgage.** All Fee Mortgages shall be subordinate to this Lease and any New Lease, and Landlord shall from time to time at the request of Tenant or any Leasehold Mortgagee provide a subordination agreement from any holder of a Fee Mortgage confirming that the Fee Mortgage is subordinate to this Lease and any New Lease.

**24.12 Limitation of Leasehold Mortgagee's and PFA's Liability.** The liability of PFA or any Leasehold Mortgagee or its designee or nominee acquiring title pursuant to foreclosure or other process in lieu thereof under this Lease shall be limited to its respective interest in the Leasehold Estate, and any judgments rendered against PFA or any such Leasehold Mortgagee or its designee or nominee following foreclosure or other process in lieu thereof shall be satisfied solely out of its interests in this Lease or the proceeds of sale of its interest in the Leasehold Estate. No personal judgment shall lie against PFA or any such Leasehold Mortgagee or its designee or nominee upon extinguishment of its rights in the Leasehold Estate, and any judgment so rendered shall not give rise to any right of execution or levy against PFA or such Leasehold Mortgagee's or its designee's or nominee's assets. The provisions of this Section 24.12 shall not inure to the successors and assigns of any Leasehold Mortgagee or its designee or nominee following its acquisition and Transfer of title to the Leasehold Estate created hereby. Nothing contained herein limiting the liability of PFA or a Leasehold Mortgagee or any Transferee shall be deemed to waive any default or remedies of Landlord.

**24.13 Security Interests.** Landlord hereby acknowledges and consents to Tenant and PFA's grant of security interests in the Personal Property of Tenant and PFA, other than Fixtures, to bona fide lenders, their successors and assigns (together, "**Secured Lenders**"). Any Personal Property of Tenant or PFA in which a security interest has been granted to a Secured Lender is hereinafter called "**Secured Property**." Landlord subordinates any interest in the

Personal Property, equipment, Fixtures, and income from operations of Tenant and PFA to security interests granted to Secured Lenders, subject to the provisions hereof. Landlord consents to the entry by Secured Lenders or their agents or representatives upon the Leasehold Estate at any time pursuant to any document evidencing or governing a lien or security interest in favor of a Secured Lender for the purpose of removing the Secured Property, except that the Secured Lenders may not remove any Fixtures from the Leasehold Estate. The Secured Property shall be deemed to be Personal Property and not a part of the Leasehold Estate and shall not be claimed or seized or levied upon in any levy or legal execution or legal proceedings by Landlord. The Secured Lenders may remove Secured Property, or any part thereof, without liability for damage to or diminution in value of the Leasehold Estate, except for the actual physical damage caused by such removal, which physical damage shall be repaired by the removing Secured Lender or caused to be repaired by the removing Secured Lender so that the Leasehold Estate shall be restored to the condition the Leasehold Estate would be in absent such removal.

**24.14 No Guaranty; Only Debtor-Creditor Relationship.** Nothing contained herein shall be construed as a guaranty, of any kind or nature, by any Leasehold Mortgagee of any of the obligations of Tenant hereunder or as creating a relationship between Tenant and any Leasehold Mortgagee other than a relationship of creditor and debtor.

**24.15 Casualty; Condemnation.** All proceeds of policies of insurance maintained hereunder and the award from any condemnation or taking of the Leasehold Estate shall be applied as provided in Article 22 and Article 23, as applicable. The Leasehold Mortgagee is hereby authorized to participate in any actions, proceedings or negotiations in connection with the collection, settlement or compromise of any such proceeds or awards.

**24.16 Proceedings.** Landlord shall give PFA and each Leasehold Mortgagee prompt written notice of any legal proceedings between Landlord and Tenant involving obligations under this Lease. PFA and each Leasehold Mortgagee shall have the right, but not the obligation, to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event that PFA or any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give PFA and the Leasehold Mortgagee written notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on PFA and all Leasehold Mortgagees not intervening after receipt of written notice of such proceedings.

**24.17 Waiver of Landlord's Lien.** Landlord does hereby waive any and all liens or claims of lien against Tenant, PFA, the Personal Property of Tenant, PFA and Commercial Subtenants, and all other trade fixtures and equipment of Tenant and PFA now or hereafter located on the Leasehold Estate, to the extent the same does not constitute a Fixture, arising from this Lease or the relationship of Landlord and Tenant hereunder (or to the extent any such waiver is ineffective under Applicable Laws, Landlord hereby subordinates any such lien or claim of lien to the liens created under any and all Leasehold Mortgages, whether now or hereafter existing).

**24.18 Changes to Mortgagee Protective Provisions.** In the event that Tenant or PFA hereafter desires to enter into a Leasehold Mortgage, Landlord shall consider in good faith any modifications, clarifications or changes to the mortgagee protective provisions contained in this Lease (including without limitation those set forth in this Article 24) which are reasonably requested by a Leasehold Mortgagee. Landlord shall promptly respond to any such request within ten (10) Business Days after Landlord's receipt of such request.

**24.19 No Modification Without Leasehold Mortgagee's Consent.** Neither Landlord nor Tenant will amend, modify, cancel or surrender the Lease without Leasehold Mortgagee's prior written consent, and any such action taken without Leasehold Mortgagee's consent shall not be binding on Tenant or Leasehold Mortgagee or their respective successors and assigns (and this Lease shall be interpreted as if such action was not taken).

**24.20 Right to Perform; Leasehold Mortgagee Consent.** The right of PFA to enforce its rights and to perform under this Article 24 shall be subject to Leasehold Mortgagee consent. Landlord shall not accept any such payment or performance by PFA under this Article 24, in connection with a Tenant default of which Leasehold Mortgagee and PFA have received notice under Section 24.3 herein, without receipt from Leasehold Mortgagee of a notice in writing consenting to such payment and performance by PFA and any such performance or action taken by PFA under Article 24 without Leasehold Mortgagee's consent shall be null and void (and this Lease shall be interpreted as if such action was not taken).

## **ARTICLE 25 QUIET ENJOYMENT**

Landlord represents and warrants that it has the right and capacity to enter into this Lease. Landlord covenants and agrees that Tenant shall peaceably and quietly have, hold, and enjoy the Leasehold Estate for the Lease Term, without hindrance or molestation by anyone claiming paramount title or claims whatsoever, except by, through, or under Tenant, subject, however, to the covenants, agreements, terms, conditions, and other obligations of this Lease and any holder of any rights under any Permitted Exceptions and subject to the rights of Landlord set forth herein if an Event of Default occurs.

Landlord shall pay all amounts required to protect and defend Landlord's title to and interest in the Leasehold Estate and as otherwise necessary to protect Tenant's interest in the Leasehold Estate hereunder from any title exceptions adversely affecting Tenant's proposed use of the Leasehold Estate, including without limitation any liens or similar claims not created by Tenant.

## **ARTICLE 26 ASSIGNMENT AND TRANSFER**

**26.1 Limitation; Consent Required.** Tenant may not, at any time, sell, assign, convey, pledge or transfer (each, as applicable, a "**Transfer**") this Lease to another Person without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. As used herein, "**Transfer**" (a) shall include the

appointment of a new Person as manager of Tenant, and (b) shall not include any subletting of the Leasehold Estate or the Transfer of a Subleasehold Estate to a trustee in conjunction with a Permitted Financing. Notwithstanding the foregoing, such restriction on Transfer shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

**26.2 Transfer by Landlord.** Notwithstanding anything set forth herein to the contrary, Landlord shall not at any time Transfer its interests in the Leasehold Estate, the Premises, the Land, the Improvements, and/or State Campus Village, or any part thereof, without the prior written consent of Tenant, PFA and any Leasehold Mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Tenant's reasonable grounds for disapproval may include the risk of loss of tax-exempt status of the Land and the Premises.

## **ARTICLE 27 ESTOPPEL CERTIFICATE**

Upon not less than ten (10) Business Days prior written request by Tenant, Landlord, PFA, any Sub-subtenant or any Leasehold Mortgagee, the other Party shall execute, acknowledge, and deliver to the requesting Party and/or to any current or prospective mortgagee, purchaser, assignee, title insurer, or other appropriate party, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified, and setting forth the modifications), setting forth the dates to which the Rent and charges payable by Tenant hereunder have been paid, whether or not to the knowledge of the Party making such certificate there is any existing default by either Party and whether or not any notice of default has been served by either Party upon the other and remains outstanding and stating the nature of any such defaults, and such other matters as may be reasonably requested, it being intended that any such statement delivered pursuant to this Article 27 may be relied upon by any existing or prospective title insurer, purchaser, assignee, PFA, Sub-subtenant, mortgagee, or other appropriate party.

## **ARTICLE 28 DISPUTE RESOLUTION**

In recognition of the long term nature of each Party's commitment to the other and the substantial investment made by Tenant with regard to the Premises, in the event of a dispute, Landlord and Tenant agree that dispute resolution shall proceed as follows: first, negotiation as provided in Section 28.1; second, mediation, as provided in Section 28.2; and third, if the Parties are still unable to resolve their dispute, the complaining Party shall have all of the rights set forth in this Lease and available to such Party under Applicable Law to pursue adjudication and resolution of the dispute ("**Dispute Resolution**"). Notwithstanding any provision of this Article 28 to the contrary, Dispute Resolution shall not apply to a Tenant Event of Default arising from the recording of Lien.

**28.1 Negotiation.** The parties shall attempt in good faith to resolve any dispute promptly by negotiation between executives who have authority to settle the controversy.

Either Party may give the other Party notice of any dispute not resolved in the ordinary course of business. Within ten (10) calendar days after delivery of the notice, the receiving Party shall submit a written response to the notice. The notice and response shall include (a) a statement of that Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) calendar days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations and materials provided pursuant to this negotiation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law, and statements made by any Party during negotiation may not be used against it in later proceedings if the Parties fail to resolve the dispute during negotiation.

**28.2 Mediation.** If a dispute has not been resolved by negotiation as provided above within twenty (20) calendar days or such longer time as the parties shall mutually agree upon, or the parties failed to meet within fifteen (15) days after delivery of the initial notice of negotiation, the parties shall endeavor to resolve the dispute by private mediation in Las Vegas, Nevada. If Landlord and Tenant cannot agree upon a mediator, each shall select one name from a list of mediators maintained by any bona fide dispute resolution provider or other private mediator, and the two mediators chosen by Landlord and Tenant shall then choose a third person who will serve as mediator. The parties agree to each have a representative present at the mediation who has authority to bind it to a written settlement agreement, subject to the approval of the board of directors or membership, as applicable, of Tenant and any consents or approvals of the Regents of the Nevada System of Higher Education or otherwise required by legislation and regulations governing Landlord. The initial mediation session shall be held promptly (but not more than thirty (30) calendar days following appointment of the mediator). All negotiations and materials provided pursuant to this mediation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law. Positions and statements made by any Party during mediation may not be used against it in later proceedings if the Parties fail to reach a settlement agreement during mediation. Each Party shall bear its own expenses and shall pay an equal share of the expenses of the mediator. Agreements reached in any mediation proceeding shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**28.3 Further Legal Action.** Except as otherwise provided in this Lease, it is the intent of the Parties that these negotiation and mediation procedures shall govern any dispute under this Lease and either Party shall have the right to specifically enforce the negotiation and mediation procedures before the other Party may seek legal redress in a court of law. If a dispute has not been resolved by negotiation and mediation as provided in Sections 28.1 and 28.2, either Party shall have the right to commence legal action. Any legal actions brought to enforce this Lease shall be interpreted by the laws of the State of Nevada and brought in a court of competent jurisdiction in the State of Nevada; provided, however, that the following enumerated matters shall be governed by the laws of the State of Wisconsin, excluding

conflicts of law principles: (i) the Authority's organization, existence, statutory and corporate powers, and legal and contractual capacity; (ii) the Authority's right to the payment of its fees, costs and expenses, including, but not limited to, attorneys' fees, costs of investigation and the expenses of other professionals retained by the Authority and the reasonableness of such fees, costs, and expenses; (iii) the Authority's and the Authority Indemnified Persons' rights to indemnification from Company (and Company's corresponding obligation to provide such indemnification); (iv) Company's release of the Authority and the Authority Indemnified Persons from liability; (v) exculpation of the Authority and the Authority Indemnified Persons from pecuniary liability and any limitations thereon; and (vi) the Authority's governmental rights, privileges and immunities, and any action concerning such issues must be brought in the State of Wisconsin.

## **ARTICLE 29 INTEREST ON PAST DUE OBLIGATION**

To compensate Landlord for its additional cost of processing late payments, for any payment of Rent which is not received within 7 days after it is due, Tenant will pay a late charge of two percent (2%) of the late payment, but not more than \$1,000 per month. Unless otherwise specifically provided herein, any amount due under this Lease from Tenant to Landlord which is not paid when due shall bear interest from the due date until paid at the Default Rate.

## **ARTICLE 30 SURRENDER UPON LEASE TERMINATION**

Upon the earlier of the expiration of the Lease Term or earlier termination of this Lease arising from a Tenant Event of Default, Tenant shall remove Tenant's Personal Property and equipment that is not attached to the Improvements and shall surrender the Premises to Landlord in good functional similar condition as when placed in service (normal wear and tear excepted), damage by condemnation, casualty, and normal wear and tear excepted; provided that Tenant shall not remove from the Premises any Fixtures attached to or used in connection with operation of the Improvements, or any additions to or replacements thereof made during the Lease Term, it being the intent of the Parties that upon expiration or earlier termination of this Lease, Landlord shall receive the Improvements in operating condition; provided that nothing contained herein shall be construed as prohibiting Tenant from removing the Personal Property of Tenant or as prohibiting the removal of any belongings of any Subtenant. Tenant's Personal Property not removed by Tenant within six months after any expiration or other termination shall be considered abandoned, and Landlord may dispose of such property in accordance with Applicable Laws.

## **ARTICLE 31 DEFAULT AND REMEDIES**

**31.1 Tenant Defaults.** The occurrence of any of the following shall constitute an event of default by Tenant hereunder (each, a "***Tenant Event of Default***"):

(a) Tenant shall have failed to pay any Base Rent payable under Section 5.1 when due or (subject to receipt of notice of the same from Landlord to the extent the bill therefor is received by Landlord) any other sum required or stipulated to be paid by Tenant to Landlord hereunder, and such failure continues for thirty (30) calendar days following Tenant's and PFA's receipt of written notice thereof from Landlord; or

(b) Tenant shall have failed to observe or perform any other covenant or obligation of Tenant hereunder and Tenant shall not have cured such failure within sixty (60) calendar days after Tenant and PFA shall have received written notice thereof from Landlord; provided, however, that if such failure is such as cannot with diligent effort be cured within sixty (60) calendar days, Tenant shall not be in default hereunder if Tenant shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter, provided, however, that Tenant in all cases in which Tenant cannot so cure the default or other failure to perform in question within the said sixty (60) day period, Tenant shall effectuate such cure within ninety (90) calendar days after Landlord's written notice of such default; or

(c) If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, "*Insolvency Laws*"), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Tenant of Tenant's covenants and obligations under this Lease, as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Tenant of the performance of Tenant's covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Tenant of the performance of Tenant's covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Tenant or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If Tenant shall abandon the Premises; or

(f) If a Lien is recorded against the Land or Leasehold Estate and Tenant fails to furnish a bond or otherwise obtain a release or discharge of the Lien as required by Article 20 of this Lease within thirty (30) days after receipt of notice of the recording of the Lien; or

(g) If any warranty or representation of Tenant contained in this Lease is untrue in any material respect as of the date made; or

(h) A Transfer of this Lease in violation of Article 26.

**31.2 Landlord Remedies.** Upon the occurrence of a Tenant Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees set forth herein, Landlord shall be entitled to exercise any one or more or all of the following remedies:

(a) Subject to the rights of Leasehold Mortgagees set forth herein, Landlord may terminate this Lease and the rights of Tenant hereunder, and may enter and retake possession of the Land and Leasehold Estate (subject to the rights of PFA, Sub-subtenants and Residents); or

(b) Landlord may exercise any other right or remedy available at law or in equity; provided that the remedy of terminating this Lease shall be subject to the rights of Leasehold Mortgagees, PFA, Sub-subtenants and Residents; or

(c) Landlord, without additional notice, may cure such Event of Default on the part of Tenant at Tenant's expense, and Tenant shall promptly reimburse Landlord for all actual, reasonable costs and expenses incurred by Landlord in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Landlord in so curing such default or failure, and any damages incurred by Landlord as a result of such default or failure, shall be paid by Tenant within thirty (30) days of demand therefor by Landlord.

**31.3 Tenant's Right to Contest.** Notwithstanding anything to the contrary contained herein, if Landlord claims that a default has occurred under Section 31.1(b), and Tenant has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.1(b) shall be tolled during the period between the date such proceedings are instituted until the final, non-appealable adjudication of such proceedings.

**31.4 Landlord Defaults.** The occurrence of any of the following shall constitute an event of default by Landlord hereunder (each, a "**Landlord Event of Default**"):

(a) Landlord shall have failed to pay any sum required or stipulated to be paid by Landlord to Tenant hereunder, and such failure continues for ninety (90) calendar days following Landlord's receipt of written notice thereof from Tenant; or

(b) Landlord shall have failed to observe or perform any other covenant or obligation of Landlord hereunder and Landlord shall not have cured such failure within ninety (90) calendar days after Landlord shall have received written notice thereof from Tenant; provided, however, that if such failure is such as cannot with diligent effort be cured within ninety (90) calendar days, Landlord shall not be in default hereunder if Landlord shall have commenced action to remedy such failure



promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Landlord shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, “**Insolvency Laws**”), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Landlord of Landlord’s covenants and obligations under this Lease, as applicable, or of all or any substantial part of its properties or of the Land, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Landlord of the performance of Landlord’s covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Landlord of the performance of Landlord’s covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Landlord or of all or substantially all of its properties or of the Land, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If any warranty or representation of Landlord contained in this Lease is untrue in any material respect as of the date made; or

(f) Landlord shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(g) A Transfer of this Lease in violation of Article 26 above.

**31.5 Tenant Remedies.** Upon the occurrence of a Landlord Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees herein, Tenant shall be entitled to exercise any one or more or all of the following remedies:

(a) Tenant may exercise any right or remedy available at law or in equity; and

(b) Tenant, without additional notice, may cure such Event of Default on the part of Landlord at Landlord’s expense, and Landlord shall promptly reimburse Tenant for all actual, reasonable costs and expenses incurred by Tenant in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, shall be paid by Landlord within thirty (30) days of demand therefor by Tenant.

**31.6 Landlord's Right to Contest.** Notwithstanding anything to the contrary contained herein, if Tenant claims that a default has occurred under Section 31.4(b), and Landlord has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.4(b) shall be tolled during the period between the date such proceedings are instituted until the final, non-appealable adjudication of such proceedings.

**31.7 Tenant's Remedies.** In the event that Landlord defaults hereunder or fails to timely comply with any of its duties or obligations hereunder, provided said default is not cured within ninety (90) calendar days after the giving of written notice thereof by Tenant to Landlord, unless such default is of such nature that it cannot be cured within such 90-day period, in which case no default is to occur so long as Landlord commences the curing of the default within such 90-day period and thereafter diligently pursues the curing of same, Tenant may, in addition to any other right or remedy available to Tenant hereunder or at law or in equity, cure such default or failure at Landlord's expense, and Landlord shall promptly reimburse Tenant for all actual costs and expenses incurred by Tenant, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, may at Tenant's option be offset against any Rent and other amounts from time to time due or owing by Tenant to Landlord hereunder.

## **ARTICLE 32 GENERAL PROVISIONS**

**32.1 Notices.** Except as otherwise expressly provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

TO LANDLORD:	BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION c/o: Vice President for Finance and Business Operations Nevada State College 1300 Nevada State Drive Henderson, NV 89002 Attn: Kevin Butler Phone: (707) 992-2312 Fax: (702) 992-2351 Email: kevin.butler@nsc.edu
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WITH A COPY TO:	NEVADA SYSTEM OF HIGHER EDUCATION c/o Vice Chancellor for Legal Affairs 4300 S. Maryland Parkway Las Vegas, NV 89119 Attn: Nicholas G. Vaskov Phone: (702) 889-8426 Fax: (702) 889-8495 Email: <a href="mailto:nicholas_vaskov@nshe.nevada.edu">nicholas_vaskov@nshe.nevada.edu</a>
TO TENANT:	American Public Development, LLC 2821 West Horizon Ridge Parkway, Suite 120 Henderson, NV 89074 Attention: Tony Traub Phone: (702) 227-7111 Fax: (702) 227-7191 Email: <a href="mailto:ttraub@garfieldtraub.com">ttraub@garfieldtraub.com</a>
WITH A COPY TO:	American Public Development, LLC 2821 West Horizon Ridge Parkway, Suite 120 Henderson, NV 89074 Attention: Cam Walker Phone: (702) 227-7111 Fax: (702) 227-7191 Email: <a href="mailto:cam@camwalker.com">cam@camwalker.com</a>
AND A COPY TO:	Ballard Rawson, Chartered 10181 Park Run Drive, Suite 110 Las Vegas, NV 89145 Attention: Kris T. Ballard, Esq. Phone: (702) 425-3555 Fax: (702) 722-5525 Email: <a href="mailto:ktb@ballardrawson.com">ktb@ballardrawson.com</a>

Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by facsimile transmission, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) Business Day after such deposit. Notice given in any other manner shall be effective only if and when received (or when receipt is refused) by the Party to be notified. A Party's address may be changed by written notice to the other Party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice.

A copy of all notices given by any party under this Lease shall be simultaneously provided to PFA, as follows:

Public Finance Authority  
Suite 900  
22 East Mifflin Street  
Madison, Wisconsin 53703  
Attention: Scott Carper and Michael LaPierre  
Email: [scarper@pfauthority.org](mailto:scarper@pfauthority.org) and [mlapierre@pfauthority.org](mailto:mlapierre@pfauthority.org)  
Facsimile: (608) 237-2368

**32.2 Waiver.** Neither Party shall be deemed, by any act of omission or commission, to have waived any of its rights or remedies under this Lease unless the waiver is in writing and signed by such Party. Any such waiver shall be applicable only to the extent specifically set forth in the writing. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

**32.3 Compliance With Laws.** Tenant shall comply in all material respects at Tenant's sole cost and expense with all notices of all governmental authorities having jurisdiction over the Premises and shall observe and comply with all Applicable Laws. Notwithstanding the foregoing, Tenant shall have the right to reasonably contest any such notices or Applicable Laws.

**32.4 Approvals to be Reasonable.** Unless the context of a provision clearly and unambiguously indicates otherwise, any approval or consent required under this Lease or requested by a Party of the other Party, shall not be unreasonably withheld, conditioned or delayed.

**32.5 Interpretation.** The language in all parts of this Lease shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for or against either of the Parties, and the construction of this Lease and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of either of the Parties. The Parties do not intend to become, and nothing contained in this Lease shall be interpreted to deem that Tenant and Landlord are, partners or joint venturers in any way or that Tenant is an agent or representative of Landlord for any purpose or in any manner whatsoever. A male or female person may be referred to in this Lease by a neuter or masculine pronoun. The singular includes the plural, and the plural includes the singular. A provision of this Lease which prohibits a Party from performing an action shall be construed so as to prohibit the Party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Lease specifies otherwise, each Party shall be deemed to be required to perform its obligations under this Lease at its own expense, and each Party shall be permitted to exercise its rights and

privileges only at its own expense. “Including” means “including but not limited to.” Words such as “hereby,” “herein,” and “hereunder” and words of similar import shall be construed to refer to this Lease in its entirety. “Include” means “include but not limited to.” “Any” means “any and all.” Except to the extent the context requires otherwise, “may” means “may but shall not be obligated to.” “At any time” means “at any time and from time to time.” An expense incurred on behalf of a Party shall be deemed to have been incurred by the Party. An obligation performed on a Party’s behalf and pursuant to its request or consent shall be deemed to have been performed by the Party. If a Party is required not to unreasonably withhold consent or approval, the Party shall also be required not to unreasonably delay consent or approval.

**32.6 Captions, Links, Table of Contents.** The captions, links, headings, and table of contents set forth in this Lease are for convenience of reference only and shall not be limiting or determinative in the construction or interpretation hereof.

**32.7 Memorandum of Lease.** The Parties shall execute a memorandum of lease (the “**Memorandum of Lease**”) of this Lease in the form of **Exhibit D** attached to this Lease for recording. Any recording, realty transfer, documentary, stamp, or other tax imposed upon the execution or recording of the Memorandum of Lease shall be paid by Tenant.

**32.8 Binding Effect.** All terms, covenants, conditions, and agreements contained in this Lease shall extend to and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.

**32.9 Partial Invalidity.** If any term, covenant, or condition of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term, covenant, and condition of this Lease shall be valid and shall be enforced to the extent permitted by Applicable Laws; provided such partial invalidity does not prevent Tenant from realizing the benefit of its bargain pursuant to this Lease, including but not limited to possession of the Premises and the use thereof in all material respects as contemplated by this Lease.

**32.10 Unavoidable Delays.** If either Party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease (other than an obligation or condition requiring the making of any payment hereunder) by any condition beyond the reasonable control of such Party, commonly referred to as “force majeure” (each, an “**Unavoidable Delay**”), including, without limitation, any strike, lockout, labor dispute, inability to obtain labor or materials, failure of power, unavailability of utility service, delays attributable to a Party’s unreasonable withholding of its consent or approval hereunder, Act of God, unusually severe or inclement weather, governmental restriction, regulation or control, terrorist, war, enemy, or hostile governmental action, civil commotion, insurrection, sabotage, or fire or other casualty, then the time to perform such obligation or satisfy such condition shall be extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days. If either Party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days.

**32.11 Intellectual Property Rights.** No Party may use the intellectual property rights of the other Party without the express written permission of the other Party. Without limiting the generality of the last sentence, Tenant shall not use the name of the “Nevada System of Higher Education” or “Nevada State College”, or the marks, seals, logos, or any other related name (collectively the “Marks”), in its advertising or in the production of any materials produced by Tenant, without the prior written consent of NSHE or NSC, as the case may be, pursuant to an approved licensing or other agreement between the parties. Tenant may, however, use the names “Nevada System of Higher Education” and “Nevada State College” or their acronyms in factual descriptions of the Premises and, to the extent that Tenant delivers materials to NSC for publication or dissemination that include the names or Marks and NSC does so publish or disseminate the materials, it shall be deemed approval of such use.

**32.12 Nonliability of Landlord and Tenant Officials and Employees.** Landlord’s responsibility and liability under this Lease shall be limited to its interest in the Land, and Tenant shall look solely to Landlord’s interest in the Land for the collection of any judgment. No director, officer, official, employee, agent, or representative of Landlord shall be personally liable to Tenant or any successor in interest, in the event of any default or breach by Landlord for any amount which may become due to Tenant or any successor in interest, or on any obligation incurred under the terms of this Lease. In no event shall this Lease be considered a general obligation of the Landlord or the State of Nevada. Tenant’s responsibility and liability under this Lease shall be limited to its interest in the Leasehold Estate, and Landlord shall look solely to Tenant’s interest in the Leasehold Estate for the collection of any judgment. No officer, official, employee, agent, member, or representative of Tenant shall be personally liable to Landlord or any successor in interest, in the event of any default or breach by Tenant for any amount which may become due to Landlord or any successor in interest, or on any obligation incurred under the terms of this Lease.

**32.13 Surrender at End of Term.** On the last day of the Lease Term or upon any earlier termination of this Lease, all of Tenant’s right, title and interest in and to the Leasehold Estate, (which shall include all Improvements and Fixtures) shall automatically and fully vest in Landlord, and Tenant shall surrender and deliver up the Premises to Landlord in good order, condition, and repair, damage by fire or other casualty of Taking excepted, free and clear of all lettings, occupancies, liens, and encumbrances other than (a) those, if any, existing on the date hereof, and (b) those created, or consented to, by Landlord, including the PFA Sublease and all Sub-subleases. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date. Notwithstanding the termination of the Lease, Tenant shall remain liable to Landlord for any loss or damage suffered by Landlord because of any Event of Default of Tenant. Upon surrender, Tenant shall assign to Landlord or Landlord’s designee, the PFA Sublease, all Sub-subleases, and other agreements and rights relating to the operation or use of the Premises, or Tenant’s interest in it, as Landlord may request. The provisions of this 32.14 shall survive the expiration or earlier termination of this Lease.

**32.14 Yield Up.** On the last day of the Lease Term or upon any earlier termination of this Lease, Tenant, its assigns, or successors in interest shall deliver to Landlord such of the following as Tenant, its assignee or successor in interest may have in its possession: Tenant's executed counterparts of any service and maintenance contracts then affecting the Premises, any maintenance records and manuals for the Premises, all original licenses and permits then pertaining to the Premises, and all warranties and guarantees then in effect that Tenant has received in connection with any equipment or work or services performed on the Improvements, together with a duly executed assignment to Landlord, without recourse or warranty, of the foregoing (whether or not Tenant has any of them in its possession), and copies of all other documents relating to the Premises.

**32.15 Reserve Accounts.** Upon the expiration or termination of the Lease Term, all reserve accounts shall automatically and fully vest in Tenant or PFA.

**32.16 Prior Agreements and Discussions.** Any agreements between Landlord on the one hand and Tenant on the other hand before the date of this Lease and relating to the Project are superseded by this Lease; provided, however, that the Project Development Agreement and the Memorandum of Understanding shall remain in full force and effect with respect to all things and matters (including all pre-development reimbursables) other than the Premises, notwithstanding the execution of this Lease. If there are any conflicts between the Project Development Agreement and the Memorandum of Understanding on the one hand and this Lease on the other hand, this Lease shall control. All prior negotiations relative to the Premises and/or State Campus Village are merged into this Lease. The submission of any unexecuted copy of this Lease shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Lease until it is executed and delivered by both Parties.

**32.17 Relationship, No Third Party Rights.** This Lease shall not be construed to create a joint venture or partnership between Landlord and Tenant, it being the intention of the parties to create only a landlord and tenant relationship. Nothing in this Lease shall be construed to permit anyone other than Landlord, Tenant, PFA, Leasehold Mortgagees and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

**32.18 Entire Agreement; Amendment.** This Lease embodies the entire agreement and understanding between the Parties with respect to the subject matter described in this instrument, and supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof, whether written or oral. The Recitals to this Lease are hereby incorporated herein and made a part hereof. The Parties acknowledge that financing and feasibility studies related to State Campus Village may require, and the Parties shall reasonably cooperate with each other, to amend or enter into additional agreements that are mutually determined to be advantageous to the construction, ownership, and operation of the Premises. Subject to Section 24.19 herein, this Lease may be changed, waived, discharged or

terminated only by an instrument in writing signed by the Party or Parties against which enforcement of such change, waiver, discharge or termination is sought.

**32.19 Counterparts.** This Lease may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature and acknowledgment pages may be taken from one counterpart and inserted in other counterparts to form a single Lease document.

**32.20 Attorneys' Fees.** In the event of any litigation proceedings regarding this Lease, the non-prevailing Party shall pay or reimburse the reasonable attorneys' fees, court costs and other reasonable costs paid or incurred by the prevailing Party in such litigation.

### **ARTICLE 33 EXHIBITS**

The Exhibits to this Lease are as follows:

- A LEGAL DESCRIPTION OF LAND
- B GRAPHIC DEPICTION OF LAND
- C PERMITTED EXCEPTIONS
- D FORM OF MEMORANDUM OF LEASE
- E PROJECT SCHEDULE
- F RENT SCHEDULE
- G INSTITUTIONAL RESTRICTIONS

***[SIGNATURE PAGE FOLLOWS]***



**IN WITNESS WHEREOF**, the Parties hereto have executed this **GROUND LEASE AGREEMENT** as of the date first written above.

**LANDLORD:**

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT:**

**AMERICAN PUBLIC DEVELOPMENT, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
--  
**LEGAL DESCRIPTION OF LAND**

APN 189-03-110-002

EXHIBIT "A"  
LEGAL DESCRIPTION  
NEVADA STATE COLLEGE CITY OF HENDERSON  
CAMPUS HOUSING AT NEVADA STATE COLLEGE  
PHASE 1

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 412.58 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 698.50 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 63.33 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 140.17 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 142.25 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 121.75 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 492.92 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 520.75 FEET TO THE POINT OF BEGINNING.

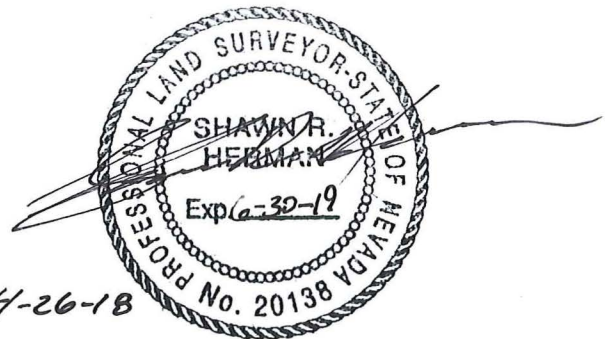
CONTAINING 7.57 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

SEE EXHIBIT "B" TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:  
SHAWN R. HERMAN, PLS  
NEVADA CERTIFICATE NUMBER 20138  
EXPIRES JUNE 30, 2019  
LOCHSA SURVEYING  
6345 SOUTH JONES BOULEVARD  
LAS VEGAS, NEVADA 89118  
TEL (702) 365-9312  
FAX (702) 365-9317



j:\survey\legal descriptions\181002 nevada state college coh campus housing phase 1 rev 3.docx

APN: 189-03-110-002

**EXHIBIT 'B'**

APN: 179-34-410-011  
CITY OF HENDERSON  
OR: 19940712: 00001493  
21.13 ACRES

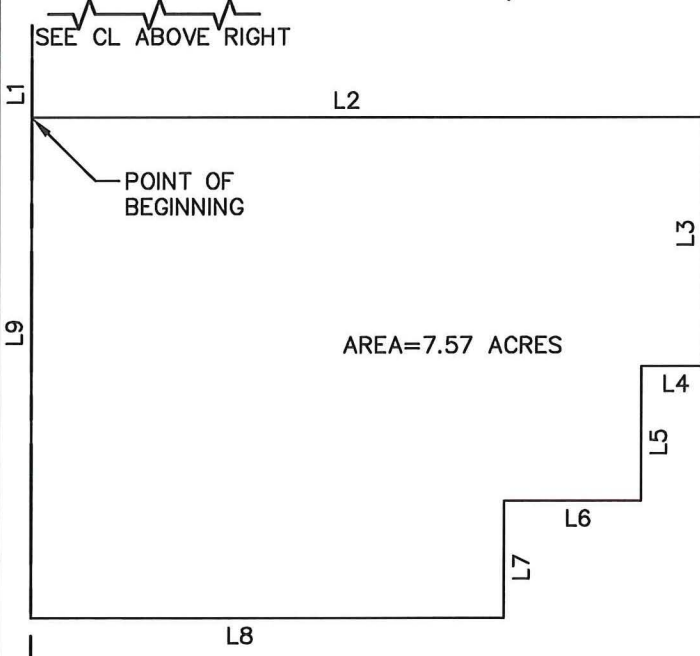
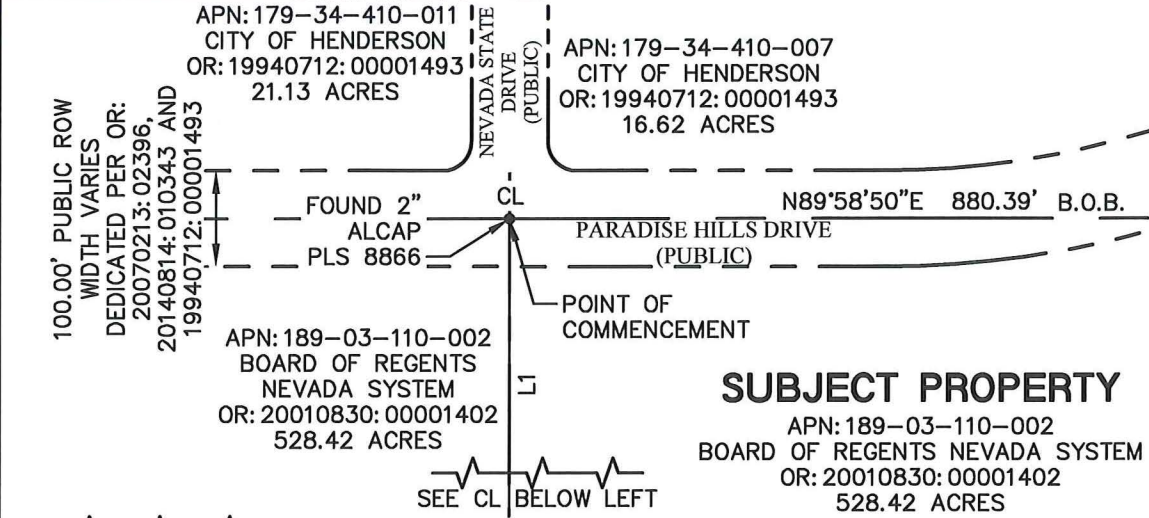
APN: 179-34-410-007  
CITY OF HENDERSON  
OR: 19940712: 00001493  
16.62 ACRES

100.00' PUBLIC ROW  
WIDTH VARIES  
DEDICATED PER OR:  
20070213: 02396,  
20140814: 010343 AND  
19940712: 00001493

APN: 189-03-110-002  
BOARD OF REGENTS  
NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES

**SUBJECT PROPERTY**

APN: 189-03-110-002  
BOARD OF REGENTS NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	412.58'	S00°00'10"W
L2	698.50'	N90°00'00"E
L3	258.83'	S00°00'00"E
L4	63.33'	N90°00'00"W
L5	140.17'	S00°00'00"E
L6	142.25'	N90°00'00"W
L7	121.75'	S00°00'00"E
L8	492.92'	N90°00'00"W
L9	520.75'	N00°00'00"E

<b>LEGEND</b>	FOUND MONUMENTATION	<b>FILE NAME:</b>	LEGAL EXHIBIT.dwg
CENTER LINE	-----	SECTION LINE	-----
ROW LINE	-----	PROPERTY LINE	-----
EASEMENT LINE	-----	ADJACENT PROPERTY LINE	-----

DRAWN BY: SAP SCALE: 1"=200'  
CHECKED BY: GMM DATE: 4-25-18

**NEVADA STATE  
COLLEGE  
CITY OF HENDERSON**

PROJECT No.:  
181002

**Lochsa**  
engineering  
6345 South Jones Blvd. Suite 100  
Las Vegas, NV 89118  
Phone (702) 365-9312 - Fax (702) 365-9317

CAMPUS HOUSING AT  
NEVADA STATE COLLEGE  
(PHASE I)

SHEET No.  
**B**  
SHEET 2 OF 2

Point of Beginning : North: 558814.33' East: 338138.25'

Segment #1 : Line

Course: S0°00'00.00"E Length: 258.83'

North: 558555.50' East: 338138.25'

Segment #2 : Line

Course: N90°00'00.00"W Length: 63.33'

North: 558555.50' East: 338074.92'

Segment #3 : Line

Course: S0°00'00.00"E Length: 140.17'

North: 558415.33' East: 338074.92'

Segment #4 : Line

Course: N90°00'00.00"W Length: 142.25'

North: 558415.33' East: 337932.67'

Segment #5 : Line

Course: S0°00'00.00"E Length: 121.75'

North: 558293.58' East: 337932.67'

Segment #6 : Line

Course: N90°00'00.00"W Length: 492.92'

North: 558293.58' East: 337439.75'

Segment #7 : Line

Course: N0°00'00.00"E Length: 520.75'

North: 558814.33' East: 337439.75'

Segment #8 : Line

Course: N90°00'00.00"E Length: 698.50'

North: 558814.33' East: 338138.25'

-----  
Perimeter: 2438.50' Area: 329837.54 Sq. Ft.

**EXHIBIT B**  
--  
**GRAPHIC DEPICTION OF LAND**





**EXHIBIT C**  
--  
**PERMITTED EXCEPTIONS**



**First American Title Insurance Company  
National Commercial Services**

**2500 Paseo Verde Parkway, #120  
Henderson, NV 89074**

April 13, 2018

Kris T. Ballard  
Ballard Rawson, Chartered  
10181 Park Run Drive, Suite 110  
Las Vegas, NV 89145  
Phone: (702)425-3555  
Fax: (702)722-5525

Customer Reference: Vacant Land/APN 189-03-110-002

Title Officer: Julie A. Skinner and  
Phone: (702)677-3500

Order Number: NCS-901556-HHLV

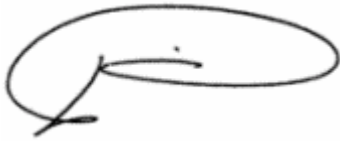
Property: Vacant Land, Las Vegas, NV 189-03-110-002

***First American Title Insurance Company***

Dennis J. Gilmore  
President

Jeffrey S. Robinson  
Secretary

Countersigned by:

A handwritten signature in black ink, consisting of a large, loopy initial 'P' followed by a smaller, less distinct mark.

---

Authorized Signatory

Attached please find the following item(s):

Commitment

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

*Customer First!*

**First American Title Insurance Company**  
**INFORMATION**

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

This information is not part of the title insurance commitment.

**TABLE OF CONTENTS**

	Page
Agreement to Issue Policy	3
Schedule A	
1. Commitment Date	4
2. Policies to be Issued, Amounts and Proposed Insured	4
3. Interest in the Land and Owner	4
4. Description of the Land	4
Schedule B-1 - Requirements	
Schedule B-2 - Exceptions	
Conditions	

**YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.**  
**If you have any questions about the Commitment,**  
**please contact the issuing office.**

COMMITMENT FOR TITLE INSURANCE

Issued by

*First American Title Insurance Company*

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.

The Exceptions in Schedule B-2.

The Conditions.

This Commitment is not valid without Schedule A and Sections 1 and 2 of Schedule B.

**SCHEDULE A**

1. Commitment Date: April 04, 2018 at 7:30 A.M.

2.	Policy or Policies to be issued:	Amount
	(A) ALTA Owner's Policy	\$To Be Determined
	Proposed Insured:	
	To Be Determined	

3. (A) The estate or interest in the land described in this Commitment is:

Fee

(B) [Title to said estate or interest at the date hereof is vested in:](#)

Board of Regents of the Nevada System of Higher Education on behalf of the Nevada State College

4. The land referred to in this Commitment is situated in the City of Las Vegas, County of Clark, State of Nevada, and is described as follows:

A PORTION OF LOT 1 OF THE "NEVADA STATE COLLEGE COMMERCIAL SUBDIVISION" RECORDED IN [BOOK 135 OF PLATS, PAGE 84](#), OFFICIAL RECORDS, AND AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED AUGUST 7, 2007 IN [BOOK 20070807 AS INSTRUMENT NO. 02995](#) AND AMENDED BY THAT CERTAIN CERTIFICATE OF AMENDMENT RECORDED MARCH 21, 2007 IN [BOOK 20070321 AS INSTRUMENT NO. 02404](#) OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA. LYING IN SECTIONS 3 AND 4, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 89°24'48" EAST, A DISTANCE OF 659.35 FEET; THENCE NORTH 89°25'52" EAST, A DISTANCE OF 659.99 FEET; THENCE NORTH 89°22'45" EAST, A DISTANCE OF 660.51 FEET; THENCE NORTH 89°24'34" EAST, A DISTANCE OF 660.27 FEET; THENCE NORTH 89°23'23" EAST, A DISTANCE OF 882.89 FEET TO A POINT ON A 1,050.00 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, TO WHICH POINT A RADIAL LINE BEARS SOUTH 17°08'33" WEST; THENCE EASTERLY ALONG SAID CURVE TO THE LEFT, AN ARC LENGTH OF 325.34 FEET THROUGH A CENTRAL ANGLE OF 17°45'10"; THENCE NORTH 89°23'23" EAST, A DISTANCE OF 117.90 FEET; THENCE NORTH 89°23'50" EAST, A DISTANCE OF 333.68 FEET; THENCE SOUTH 00°36'10" EAST, A DISTANCE OF 350.00 FEET; THENCE NORTH 89°23'03" EAST, A DISTANCE OF 621.98 FEET; THENCE NORTH 00°36'10" WEST, A DISTANCE OF 350.00 FEET; THENCE NORTH 89°22'11" EAST, A DISTANCE OF 364.95 FEET; THENCE NORTH 89°23'35" EAST, A DISTANCE OF 660.67 FEET; THENCE NORTH 89°22'34" EAST, A DISTANCE OF 170.38 FEET TO THE BEGINNING OF A 1,050.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE TO THE LEFT, AN ARC LENGTH OF 325.33 FEET, THROUGH A CENTRAL ANGLE OF 17°45'10"; THENCE NORTH 89°22'34" EAST, A DISTANCE OF 169.86 FEET; THENCE NORTH 89°22'00" EAST, A DISTANCE OF 661.03 FEET; THENCE NORTH 89°22'02" EAST, A DISTANCE OF 660.83 FEET; THENCE NORTH 89°26'33" EAST, A DISTANCE OF 660.92 FEET; THENCE NORTH 89°21'28" EAST, A DISTANCE OF 659.97 FEET TO THE NORTHEAST CORNER OF SAID SECTION 3; THENCE SOUTH 00°30'08" EAST, A DISTANCE OF 80.55 FEET; THENCE SOUTH 54°08'49" WEST, A DISTANCE OF 497.17 FEET; THENCE SOUTH 69°08'45" WEST, A DISTANCE OF 497.17 FEET TO THE BEGINNING OF SAID SECTION 3.

DISTANCE OF 1,055.51 FEET; THENCE SOUTH 89°34'39" WEST, A DISTANCE OF 250.81 FEET; THENCE SOUTH 89°22'01" WEST, A DISTANCE OF 1,320.76 FEET; THENCE SOUTH 89°21'55" WEST, A DISTANCE OF 1,320.76 FEET; THENCE SOUTH 89°21'52" WEST, A DISTANCE OF 660.13 FEET; THENCE NORTH 00°35'38" WEST, A DISTANCE OF 666.16 FEET; THENCE NORTH 00°34'52" WEST, A DISTANCE OF 665.74 FEET; THENCE SOUTH 89°21'22" WEST, A DISTANCE OF 660.04 FEET; THENCE NORTH 00°34'14" WEST, A DISTANCE OF 665.59 FEET; THENCE NORTH 00°34'14" WEST, A DISTANCE OF 1317.65 FEET TO THE POINT OF BEGINNING.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED AUGUST 30, 2007 IN [BOOK 20070830 AS INSTRUMENT NO. 01402](#).

EXCEPTING THEREFROM THAT PORTION OF SAID LAND AS CONVEYED TO THE CITY OF HENDERSON BY DEED OF DEDICATION RECORDED AUGUST 14, 2014 IN [BOOK 20140814 DOCUMENT NO. 01043](#), OFFICIAL RECORDS.

## SCHEDULE B

### SECTION ONE REQUIREMENTS

The following requirements must be met:

- (A) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (B) Pay us the premiums, fees and charges for the policy.
- (C) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (D) You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (E) Releases(s) or Reconveyance(s) of Item(s): None
- (F) Other: None
- (G) You must give us the following information:
  - 1. Any off record leases, surveys, etc.
  - 2. Statement(s) of Identity, all parties.
  - 3. Other: None

The following additional requirements, as indicated by "X", must be met:

- (H) Provide information regarding any off-record matters, which may include, but are not limited to: leases, recent works of improvement, or commitment statements in effect under the Environmental Responsibility Acceptance Act, Civil Code Section 850, et seq.

The Company's Owner's Affidavit form (as provided by company) must be completed and submitted prior to close in order to satisfy this requirement. This Commitment will then be subject to such further exceptions and/or requirements as may be deemed necessary.

- (I) An ALTA/NSPS survey of recent date, which complies with the current minimum standard detail requirements for ALTA/NSPS land title surveys, must be submitted to the Company for review. This Commitment will then be subject to such further exceptions and/or requirements as may be deemed necessary.
- (J) The following LLC documentation is required:
  - (i) a copy of the Articles of Organization
  - (ii) a copy of the Operating Agreement, if applicable
  - (iii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iv) express Company Consent to the current transaction



- (K) The following partnership documentation is required :
  - (i) a copy of the partnership agreement, including all applicable amendments thereto
  - (ii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iii) express Partnership Consent to the current transaction
  
- (L) The following corporation documentation is required:
  - (i) a copy of the Articles of Incorporation
  - (ii) a copy of the Bylaws, including all applicable Amendments thereto
  - (iii) a Certificate of Good Standing and/or other evidence of current Authority to Conduct Business within the State
  - (iv) express Corporate Resolution consenting to the current transaction
  
- (M) Based upon the Company's review of that certain partnership/operating agreement dated **Not disclosed** for the proposed insured herein, the following requirements must be met:

Any further amendments to said agreement must be submitted to the Company, together with an affidavit from one of the general partners or members stating that it is a true copy, that said partnership or limited liability company is in full force and effect, and that there have been no further amendments to the agreement. This Commitment will then be subject to such further requirements as may be deemed necessary.
  
- (N) A copy of the complete lease, as referenced in Schedule A, #3 herein, together with any amendments and/or assignments thereto, must be submitted to the Company for review, along with an affidavit executed by the present lessee stating that it is a true copy, that the lease is in full force and effect, and that there have been no further amendments to the lease. This Commitment will then be subject to such further requirements as may be deemed necessary.
  
- (O) Approval from the Company's Underwriting Department must be obtained for issuance of the policy contemplated herein and any endorsements requested thereunder. This Commitment will then be subject to such further requirements as may be required to obtain such approval.
  
- (P) Potential additional requirements, if ALTA Extended coverage is contemplated hereunder, and work on the land has commenced prior to close, some or all of the following requirements, and any other requirements which may be deemed necessary, may need to be met:
  
  
- (Q) The Company's "Indemnity Agreement I" must be executed by the appropriate parties.
  
- (R) Financial statements from the appropriate parties must be submitted to the Company for review.
  
- (S) A copy of the construction contract must be submitted to the Company for review.
  
- (T) An inspection of the land must be performed by the Company for verification of the phase of construction.
  
- (U) The Company's "Mechanic's Lien Risk Addendum" form must be completed by a Company employee, based upon information furnished by the appropriate parties involved.

## SCHEDULE B

### SECTION TWO

#### EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction. The printed exceptions and exclusions from the coverage of the policy or policies are set forth in Exhibit A attached. Copies of the policy forms should be read. They are available from the office which issued this Commitment.

1. Water rights, claims or title to water, whether or not shown by the public records.
2. Any taxes that may be due, but not assessed, for new construction which can be assessed on the unsecured property rolls, in the Office of the County Assessor, per Nevada Revised Statute 361.260.
3. Any taxes that may be due as provided under NRS 361.4725.
4. General and special taxes and assessments for the fiscal year 2017-2018 are exempt. If the exempt status is terminated an additional tax may be levied. A.P. No.: 189-03-110-002.
5. The terms, provisions and easement(s) contained in the document entitled "Right-of-Way Grant/Temporary Use Permit" recorded March 18, 1993 in [Book No. 930318 as Instrument No. 00811](#) of Official Records.
6. The terms, provisions and easement(s) contained in the document entitled "Right-of-Way Grant/Temporary Use Permit" recorded September 13, 1994 in [Book No. 940913 as Instrument No. 00920](#) of Official Records.
7. The terms and provisions contained in the document entitled "Duct Purchase Agreement" recorded September 16, 1994 in [Book No. 940916 as Instrument No. 00732](#) of Official Records.
8. The terms, provisions and easement(s) contained in the document entitled "Right-of-Way Grant/Temporary Use Permit" recorded September 19, 1995 in [Book No. 950919 as Instrument No. 00950](#) of Official Records.
9. Reservations and provisions as contained in Patent from the United States of America, recorded August 12, 2003, in [Book 20030812 of Official Records, as Instrument No. 01695](#).
10. The terms, provisions and easement(s) contained in the document entitled "Right of Entry" recorded November 21, 2006 in [Book No. 20061121 as Instrument No. 02384](#) of Official Records.
11. The terms and provisions contained in the document entitled "Access to Equipment Agreement" recorded December 5, 2006 in [Book No. 20061205 as Instrument No. 02257](#) of Official Records.
12. Easements as shown and/or dedicated upon the final map of Nevada State College, a Commercial Subdivision, on file in [Book 135 of plats, Page 84](#), of Official Records.
- And amended by that certain Certificate of Amendment recorded August 7, 2007 in [Book 15530 as Instrument No. 0299](#) (BUSINESS, FINANCE & FACILITIES COMMITTEE 06/07/18) Ref. BFF-10, Page 82 of 389

- And amended by that certain Certificate of Amendment recorded March 21, 2007 in [Book 20070321 as Instrument No. 02404](#) of Official Records.
13. The effect of a map purporting to show the land and other property, filed in [File 168, Page 7](#) of Record of Surveys.
  14. Covenants, conditions, and restrictions in a Grant, Bargain, Sale Deed recorded August 30, 2007, in [Book 20070830 as Instrument No. 01402](#) of Official Records.
  15. Terms and provisions of an unrecorded lease dated November 2, 2013, by and between Nevada System of Higher Educations as lessor and Nevada Real Property Corporation as lessee, as disclosed by a Ground Lease recorded November 26, 2013 in [Book No. 20131126 as Instrument No. 00624](#) of Official Records.  
  
Defects, liens, encumbrances or other matters affecting the leasehold estate, whether or not shown by the public records are not shown herein.
  16. The terms and provisions contained in the document entitled "Public Trail Easement" recorded June 30, 2014 in [Book No. 20140630 as Instrument No. 00922](#) of Official Records.
  17. An easement for Municipal Utilities and incidental purposes in the document recorded August 14, 2014 in [Book No. 20140814 as Instrument No. 01042](#) of Official Records.
  18. The existence of any reversionary interest, possibility of reverter, power of termination, right of first refusal, or similar interest, of the United States of America, or any other person or entity in that portion of the land lying within the right of way granted to the Southern Pacific Railroad by the United States Government.
  19. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/NSPS survey.
  20. Rights of parties in possession.

**INFORMATIONAL NOTES**

NOTE to proposed insured lender only: No Private transfer fee covenant, as defined in Federal Housing Finance Agency Final Rule 12 CFR Part 1228, that was created and first appears in the Public Records on or after February 8, 2011, encumbers the Title except as follows: None

**NOTE:** We find no open deeds of trust. Escrow please confirm before closing.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

## CONDITIONS

### 1. DEFINITIONS

(a) "Mortgage" means mortgage, deed of trust or other security instrument.

(b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

### 2. LATER DEFECTS

The Exceptions in Schedule B - Section Two may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section One are met. We shall have no liability to you because of this amendment.

### 3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### 4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section One

or

eliminate with our written consent any Exceptions shown in Schedule B - Section Two.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### 5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.



**First American Title**

**Privacy Information**  
**We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

**Applicability**

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

**Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

**Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

**Former Customers**

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

**Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**Information Obtained Through Our Web Site**

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site. There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

**Business Relationships**

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

**Cookies**

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive. [FirstAm.com](http://FirstAm.com) uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

**Fair Information Values**

**Fairness** We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

**Public Record** We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

**Use** We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

**Accuracy** We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

**Education** We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

**Security** We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

**EXHIBIT A**  
**LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)**

**1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990**  
**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:  
(a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy; or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions of area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.



2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1.
  - (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
  - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:  
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**ALTA RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
  - (a) and use
  - (b) improvements on the land
  - (c) and division
  - (d) environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
  - (a) a notice of exercising the right appears in the public records on the Policy Date
  - (b) the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
  - (a) that are created, allowed, or agreed to by you
  - (b) that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
  - (c) that result in no loss to you
  - (d) that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
  - (a) to any land outside the area specifically described and referred to in Item 3 of Schedule A OR
  - (b) in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**11. EAGLE PROTECTION OWNER'S POLICY**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

### EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. land use
  - d. improvements on the land
  - e. land division
  - f. environmental protection

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.

This exclusion does not limit the coverage described in Covered Risk 11 or 18.

### 12. THIRD GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (1/01/08)

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

### 13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 EXCLUSIONS FROM COVERAGE

(BUSINESS, FINANCE & FACILITIES COMMITTEE 06/07/18) Ref. BFF-10, Page 91 of 389

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or

expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

#### 14. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006 WITH REGIONAL EXCEPTIONS

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 13 above are used and the following exceptions to coverage appear in the policy.

##### SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

#### 15. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006 EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

**16. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 15 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

**EXHIBIT D**

--

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY:

WHEN RECORDED, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Space above this line for Recorder's Office only

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** ("***Memorandum of Lease***") is made and entered into as of \_\_\_\_\_, 2018, by and between **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION** on behalf of Nevada State College, a constitutional entity of the State of Nevada ("***Landlord***" or "***NSC***") and \_\_\_\_\_ ("***Tenant***").

1. Landlord is the owner of that certain real property located in the City of Henderson, Nevada and more particularly described on Attachment A attached hereto (the "***Land***").

2. For and in consideration of the mutual covenants, agreements, and conditions set forth in that certain unrecorded Ground Lease Agreement for State Campus Village by and between Landlord and Tenant, dated \_\_\_\_\_, 2018 (the "***Lease***").

3. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon all the terms and conditions of the Lease, the Land as more particularly described in the Lease.

4. The term of the Lease shall be for a period not to exceed approximately forty (40) years commencing on the Commencement Date as more particularly set forth therein.

5. This Memorandum of Lease has been prepared to provide notice that the Land is subject to the terms and conditions of the Lease, which terms are hereby incorporated by reference into this Memorandum of Lease.

6. In no event shall the terms of this Memorandum of Lease be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Lease. In the event of any inconsistency between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

7. This Memorandum of Lease may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same document. Signature pages may be taken from a counterpart and attached to other counterparts to form on document, which shall constitute a fully executed document that may be recorded.

**IN WITNESS WHEREOF**, Landlord and Tenant have caused their duly authorized representatives to execute this Memorandum of Lease as of the date first written above.

**LANDLORD:**

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF  
HIGHER EDUCATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[NOTARY BLOCKS]*

**ATTACHMENT A  
TO MEMORANDUM OF LEASE  
--  
LEGAL DESCRIPTION OF LAND**



APN 189-03-110-002

EXHIBIT "A"  
LEGAL DESCRIPTION  
NEVADA STATE COLLEGE CITY OF HENDERSON  
CAMPUS HOUSING AT NEVADA STATE COLLEGE  
PHASE 1

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 412.58 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 698.50 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 63.33 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 140.17 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 142.25 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 121.75 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 492.92 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 520.75 FEET TO THE POINT OF BEGINNING.

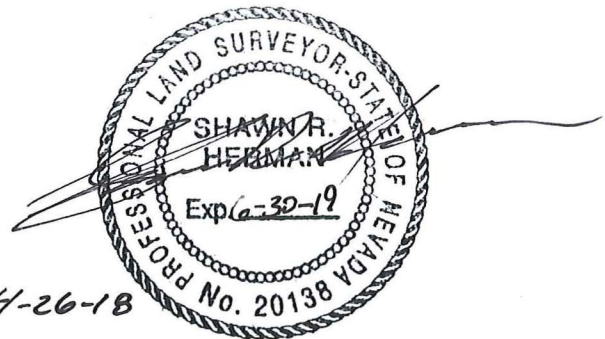
CONTAINING 7.57 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

SEE EXHIBIT "B" TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:  
SHAWN R. HERMAN, PLS  
NEVADA CERTIFICATE NUMBER 20138  
EXPIRES JUNE 30, 2019  
LOCHSA SURVEYING  
6345 SOUTH JONES BOULEVARD  
LAS VEGAS, NEVADA 89118  
TEL (702) 365-9312  
FAX (702) 365-9317



j:\survey\legal descriptions\181002 nevada state college coh campus housing phase 1 rev 3.docx

APN: 189-03-110-002

**EXHIBIT 'B'**

APN: 179-34-410-011  
CITY OF HENDERSON  
OR: 19940712: 00001493  
21.13 ACRES

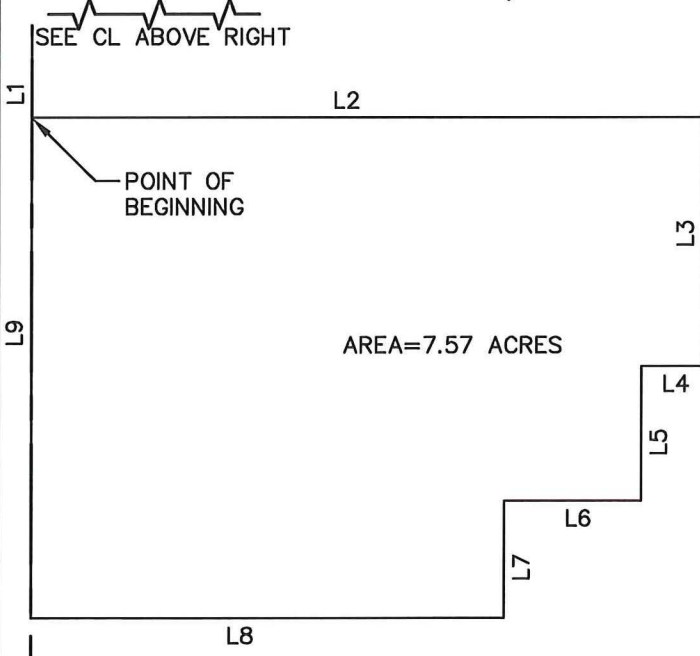
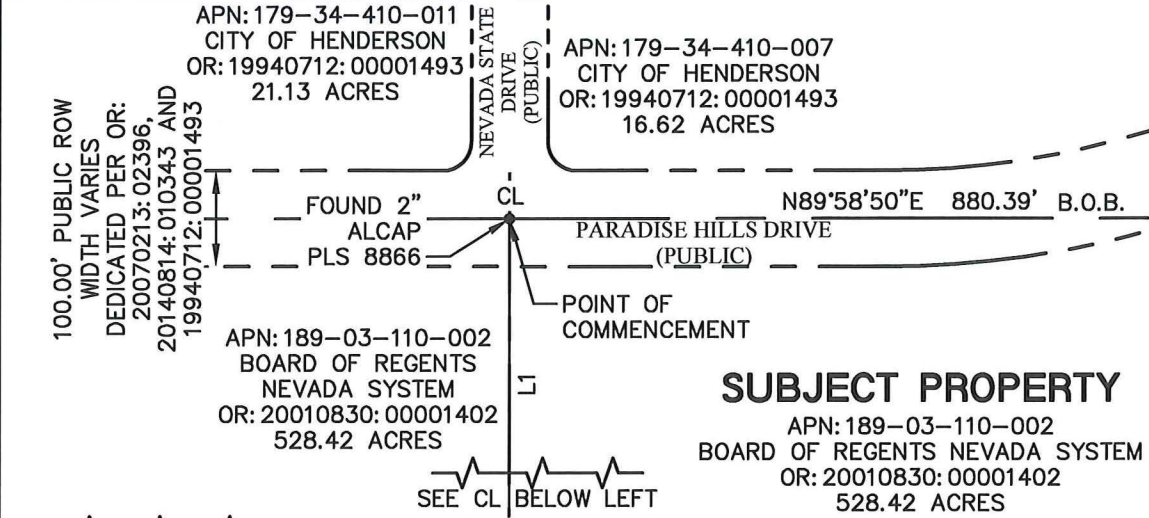
APN: 179-34-410-007  
CITY OF HENDERSON  
OR: 19940712: 00001493  
16.62 ACRES

100.00' PUBLIC ROW  
WIDTH VARIES  
DEDICATED PER OR:  
20070213:02396,  
20140814:010343 AND  
19940712:00001493

APN: 189-03-110-002  
BOARD OF REGENTS  
NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES

**SUBJECT PROPERTY**

APN: 189-03-110-002  
BOARD OF REGENTS NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	412.58'	S00°00'10"W
L2	698.50'	N90°00'00"E
L3	258.83'	S00°00'00"E
L4	63.33'	N90°00'00"W
L5	140.17'	S00°00'00"E
L6	142.25'	N90°00'00"W
L7	121.75'	S00°00'00"E
L8	492.92'	N90°00'00"W
L9	520.75'	N00°00'00"E

<b>LEGEND</b>	FOUND MONUMENTATION	<b>FILE NAME:</b>	LEGAL EXHIBIT.dwg
CENTER LINE	-----	SECTION LINE	-----
ROW LINE	-----	PROPERTY LINE	-----
EASEMENT LINE	-----	ADJACENT PROPERTY LINE	-----

DRAWN BY: SAP    SCALE: 1"=200'  
CHECKED BY: GMM    DATE: 4-25-18

**NEVADA STATE  
COLLEGE  
CITY OF HENDERSON**

PROJECT No.:  
181002

**Lochsa**  
engineering  
6345 South Jones Blvd. Suite 100  
Las Vegas, NV 89118  
Phone (702) 365-9312 - Fax (702) 365-9317

CAMPUS HOUSING AT  
NEVADA STATE COLLEGE  
(PHASE I)

SHEET No.  
**B**  
SHEET 2 OF 2

Point of Beginning : North: 558814.33' East: 338138.25'

Segment #1 : Line

Course: S0°00'00.00"E Length: 258.83'

North: 558555.50' East: 338138.25'

Segment #2 : Line

Course: N90°00'00.00"W Length: 63.33'

North: 558555.50' East: 338074.92'

Segment #3 : Line

Course: S0°00'00.00"E Length: 140.17'

North: 558415.33' East: 338074.92'

Segment #4 : Line

Course: N90°00'00.00"W Length: 142.25'

North: 558415.33' East: 337932.67'

Segment #5 : Line

Course: S0°00'00.00"E Length: 121.75'

North: 558293.58' East: 337932.67'

Segment #6 : Line

Course: N90°00'00.00"W Length: 492.92'

North: 558293.58' East: 337439.75'

Segment #7 : Line

Course: N0°00'00.00"E Length: 520.75'

North: 558814.33' East: 337439.75'

Segment #8 : Line

Course: N90°00'00.00"E Length: 698.50'

North: 558814.33' East: 338138.25'

-----  
Perimeter: 2438.50' Area: 329837.54 Sq. Ft.

**EXHIBIT E**  
**PROJECT SCHEDULE**



















**EXHIBIT F**

**RENT SCHEDULE**

<u>Lease Year</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
1	50,000	4,167
2	51,500	4,292
3	53,045	4,420
4	54,636	4,553
5	56,275	4,690
6	57,964	4,830
7	59,703	4,975
8	61,494	5,124
9	63,339	5,278
10	65,239	5,437
11	67,196	5,600
12	69,212	5,768
13	71,288	5,941
14	73,427	6,119
15	75,629	6,302
16	77,898	6,492
17	80,235	6,686
18	82,642	6,887
19	85,122	7,093
20	87,675	7,306
21	90,306	7,525
22	93,015	7,751
23	95,805	7,984
24	98,679	8,223
25	101,640	8,470
26	104,689	8,724
27	107,830	8,986
28	111,064	9,255
29	114,396	9,533
30	117,828	9,819
31	121,363	10,114

32	125,004	10,417
33	128,754	10,730
34	132,617	11,051
35	136,595	11,383
36	140,693	11,724
37	144,914	12,076
38	149,261	12,438
39	153,739	12,812
40	158,351	13,196

## EXHIBIT G

### INSTITUTIONAL RESTRICTIONS

#### NSHE BOARD OF REGENTS POLICIES RELATED TO STUDENT HOUSING

##### **Section 34. Possession and Use of Marijuana**

The Nevada System of Higher Education is sympathetic to the medical needs of our students, employees and visitors. A growing number of states, including Nevada, are enacting laws decriminalizing or legalizing the use, possession, delivery, manufacture, growth, distribution, production, and/or cultivation (hereinafter “use”) of marijuana, including for medical purposes. Federal law prohibits the use of marijuana, including for medical purposes, on college and university campuses that receive federal funding. The following provisions shall govern the possession and use of marijuana, including for medical purposes, on NSHE property.

1. The use, possession, or cultivation of marijuana, including for medical purposes, on any NSHE or NSHE foundation owned or leased property, or at any NSHE sponsored or authorized activity, is expressly prohibited.
2. Students, employees, faculty, guests, and/or visitors who violate this policy are subject to applicable disciplinary, legal and/or administrative action.
3. Each institution shall permit students who live on-campus or in housing that is owned or operated by the institution, to petition (“request”) for a release from the housing agreement if they assert legal compliance with Nevada state law to use medical marijuana. Such students, who prove their compliance with state law, may, in accordance with the applicable institution refund policy, be released from their housing agreements and may receive a prorata refund of housing fees or rent paid.

Title 4, Chapter 1, Page 30

##### **Section 36. Policy on Registered Offenders**

###### **3. Institutional Procedures Governing Registered Offenders**

Each President shall develop procedures governing the application, admission, enrollment, employment and/or other presence, including but not limited to volunteers and vendors, on campus of a registered offender. These procedures must comply with state and federal law governing registered offenders and must include, but are not limited to, the following:

###### **a. Self-Reporting Required by Registered Offender**

Institutions must require registered offenders to report their offender status and provide other information required by the institution to the institution’s police or security services and/or other individual or department designated by the institution. Failure to self-report may result in immediate removal from campus and/or disciplinary action, including sanctions authorized by this section. Other information required by the institution may include, but is not limited to, contact information; changes in residence and employment; and name and address of supervising agency, if any.

###### **b. Restrictions Placed on Registered Offender by Institution**



Institutions must document any restrictions placed on the registered offender as a condition of application, admission, enrollment, employment and/or other presence, including but not limited to volunteers and vendors. The restrictions may include but are not limited to:

i. Restrictions on Institutional Housing

Institutions may deny or restrict a registered offender from working, visiting, or living in residence halls, apartments or other institutional facilities for housing.

Title 4, Chapter 1, Page 32

**Section 17. Emotional Support Animals**

1. Policy Statement

The Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act protect the right of people with disabilities to keep emotional support animals within housing associated with educational institutions. The Nevada System of Higher Education is committed to reasonably accommodating individuals with disabilities who require the assistance of an emotional support animal in institutional housing.

2. Emotional Support Animal:

An “emotional support animal” (“ESA”) is an animal that provides comfort to an individual with a disability upon the recommendation of a healthcare or mental health professional. An emotional support animal does not assist an individual with a disability with activities of daily living but rather its role is to live with an individual and alleviate the symptoms of an individual’s disability.

3. Institutional Housing

Emotional support animals may reside in institutional housing only with express written approval of the institution through the institutional policies and procedures established pursuant to subsection 4 of this policy.

4. Institutional Policies and Procedures

Each institution shall develop policies and procedures to implement this policy and govern the presence of emotional support animals in institutional housing, and other approved areas, if any. Such policies and procedures must include, but are not limited to:

a. The process under which individuals may request approval to have an emotional support animal in institutional housing, or other approved areas, if any. This process must include a means of verifying that a disability exists and that the need for the presence of the emotional support animal is genuine based on the professional opinion of a physical or mental health care licensed provider or therapist.

b. The responsibility of individuals with emotional support animals, including but not limited to:

i. Care and supervision of the animal;

ii. Health and safety of others, including ensuring that others are not threatened by an emotional support animal and that such animals authorized to live in institutional housing do not interfere with others’ enjoyment of the residential space; and

- iii. Other reasonable conditions or restrictions, if necessary to ensure the health, safety and reasonable enjoyment of others.
- c. The circumstances under which an emotional support animal may be removed.
- d. Any restrictions on where the emotional support animal may be present in institutional housing, or other approved areas, if any.

## 5. Damage

Owners of emotional support animals are solely responsible for any damage to individuals or property caused by their animal.  
(B/R 6/17)

Title 4, Chapter 8, Page 37

### **Section 4. Alcoholic Beverage Policy**

1. The storage and use of alcoholic beverages shall be permitted to students 21 years of age or older living in approved NSHE housing, subject to the following conditions:
  - a. Students over 21 years of age may elect in each living unit to be clustered so as to facilitate enforcement of all state and local laws relative to the consumption of alcoholic beverages. Their being permitted to do so would result from a majority decision in which all members of that living unit participate.
  - b. Students who elect to cluster so as to enjoy the privilege of drinking will have the responsibility of obeying the law (as will minor students).
  - c. The privilege of clustered students to consume alcoholic beverages may be revoked by the majority vote of others residing in the living unit.
  - d. The purchase of alcoholic beverages for use at NSHE functions shall be permitted for the following functions or pursuant to the following conditions:
    - (1) Conferences, programs, institutes, and similar functions where a part of the fee collected is for a cocktail party.
    - (2) Host account expenditures for alcoholic beverages with dinner and for large receptions.
    - (3) Student associations must have the institutional president's prior approval and the institutional president is to be the only person authorized to approve payment for the purchase of alcoholic beverages from Student Association Funds. The institutional president will only grant this authorization upon being satisfied that proper supervision is provided in the dispensing of alcoholic beverages.
2. Except as provided above, the storage, possession or use of alcoholic beverages shall not be permitted on University owned or supervised property, including University supervised housing, apartments, residence halls, or on sorority or fraternity property.
3. Any student who exhibits offensive behavior on the University owned or supervised property while under the influence of alcoholic beverages shall be subject to disciplinary action.
4. The president has the authority to designate the time and place for special events where alcoholic beverages may be served on the University campus.

Title 4, Chapter 20, Page 3

## PROJECT DEVELOPMENT AGREEMENT

This Project Development Agreement (the “**Development Agreement**”) is made by and between American Public Development, LLC, a Nevada limited liability company (“**Developer**”), and the Board of Regents of the Nevada System of Higher Education (“**Board of Regents**”), on behalf of Nevada State College (“**NSC**”). Developer and NSC are each referred to as a “**Party**” and collectively be referred to as the “**Parties**” herein.

This Development Agreement shall become effective when executed by Developer and approved by the Board of Regents at a publicly noticed meeting (the “**Effective Date**”).

As used herein, the term “**Developer**” is used in the singular to refer to American Public Development, LLC, or its assignee, that is responsible for developing the State Campus Village Project on the Land (the “**Project**”).

The Parties desire to develop the Project subject to the terms and conditions of this Development Agreement and therefore agree as follows:

### ARTICLE 1. THE PROJECT

1.1. In early 2010, NSC completed its campus master plan (the “**Master Plan**”) for its 509-acre site (“**Site**”). Student housing is identified as a significant component of the Master Plan, and is eventually intended to provide housing for 5,200 students on approximately 46 acres of the Site.

1.2. In furtherance of Site development activities, NSC commenced an RFI process in 2015 which resulted in NSC entering into a non-binding memorandum of understanding on August 1, 2016, with Eric A. Traub dba Traub and Associates (“**Traub**”) and Leducor Construction, Inc. (“**Leducor**”) to assist with the development of the Site. Traub and Leducor worked on development opportunities for the Site, including a real estate analysis and demand study that demonstrates there is significant demand for student housing at NSC.

1.3. A new Memorandum of Understanding approved by the Board of Regents on December 1, 2017, between NSC and Developer (“**MOU**”), as the successor to Traub and Leducor. As set forth in the MOU, the Developer has proposed to enter into a ground lease with NSC for the undeveloped real property described on **Exhibit A** (the “**Land**”), comprising approximately seven and one-half (7.5) acres for the initial phase of student housing for the Site. The Project is a development of seven buildings of student housing totaling approximately 312 beds, subject to further revision by Developer, as shown on **Exhibit B** (the “**Project Plans**”). It is anticipated that Developer will construct future phases of student housing at the Site, as determined by Tenant and approved by NSC.

1.4. It is anticipated that, at the time of the Developer entering into the Lease, the Developer will sub-lease the Land to the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin (“**PFA**”), which will finance the Project development through the issuance of its [ ] Series 2018 Revenue Bonds and contract with Developer for the management of the student housing facility.

1.5. The Project and future phases of student housing will be called the “State Campus Village.”

1.6. **The Project Implementation Agreements.** This Development Agreement is one of several agreements (collectively the “**Project Implementation Agreements**”) that, upon execution by the Parties, will govern the Project. The Project Implementation Agreements also include:

(a) that certain **Ground Lease Agreement** by which NSC leases the Land to Developer (the “**Lease**”);

(b) that certain **Ground Sublease Agreement** (“**Sublease**”) by which the Developer subleases the Land to PFA; and

(c) the Sub-Development Agreement, the Subleasehold Deed of Trust, the Asset Management Agreement, the Facility Operating Agreement and any other agreements and documents that are or become necessary to complete the Project.

1.7. **This Development Agreement.** As detailed herein, this Development Agreement establishes certain design standards and construction requirements and related approval processes for the Land and Project. Developer agrees, by accepting such leasehold, to design and construct, and require its architects, engineers and contractors to design and construct, that portion of the Project for which it is responsible, consistent with this Development Agreement.

1.8. **Lease.** Concurrently with the execution of this Development Agreement, the Developer and NSC will execute (i) the Lease for the Land, and (ii) the other Project Implementation Agreements necessary to effectuate this Development Agreement and the transactions contemplated hereby.

1.9. **Development Fee.** The Developer shall be entitled to receive for its compensation a development fee of five percent (5%) of the Total Project Costs in one lump sum at the time set forth in the Sub-Development Agreement to be paid pursuant to Section 3 of the Sub-Development Agreement. As used herein, “Total Project Costs” means the total cost of developing and constructing the Improvements in accordance with the design documents, including without limitation the cost to (i) design and construct the Project, (ii) manage and oversee the design and construction of the Project, and (iii) outfit and prepare the Project for operations, including furniture, fixtures, equipment.

1.10. **Sub-Development Agreement and Other Services.** Concurrently with the execution of this Development Agreement, Developer will enter into the Sub-Development Agreement with PFA for services during the construction of the Project, including without limitation monthly reporting to PFA and NSC. NSC will acknowledge the Sub-Development Agreement and consent to the terms therein. The Developer will enter into such other agreements including, without limitation, the Project Implementation Agreements, necessary to effectuate the purpose of this Development Agreement.

1.11. **NSC's Pre-Development Costs.** In connection with the financing of the Project, NSC shall be paid the sum of \$250,000 for its pre-development costs incurred before the execution of this Development Agreement. The payment will be made from the Project, directly to NSC.

## ARTICLE 2. DESIGN AND CONSTRUCTION STANDARDS.

2.1. **General Intent and Covenant.** Developer shall, at its own expense, design and construct the Project in accordance with the provisions of this Development Agreement, the Lease, the Sub-Development Agreement, the Sublease and the MOU. The Project shall be constructed in substantial conformance with the Construction Documents (as defined in Section 2.7(a)) for the Project and in a good and workmanlike manner with good quality new or recycled materials, in compliance with Applicable Law (as defined herein). Furthermore, the provisions and requirements of this Development Agreement touch and concern the Land, shall constitute covenants running with the Land, and shall be binding upon the Land and inure to the benefit of NSC, the Developer as well as their respective successors and assigns. The Developer shall record this Development Agreement with the Clark County Recorder's Office, and NSC shall execute all documents, and otherwise cooperate, necessary to allow such recording.

The Parties intend to complete the Project in order to provide student housing for the fall 2019 semester. In order to make that schedule, the Parties intend to fast track the planning, design and construction efforts, including, without limitation, the commencement of grading and other construction activities before all approvals set forth herein have been given. The Parties pledge their diligent, good faith efforts to provide approvals in an expeditious manner.

As used herein, "**Applicable Laws**" means applicable local, state, or federal laws, statutes, codes, ordinances, rules, regulatory notices, and any notices or orders of any and all governmental, quasi-governmental, or regulatory authorities and other authorities, and agencies having jurisdiction over the Land or the Project, which are in effect from time to time.

2.2. **Design Quality Standard.** Developer agrees to design and construct the Project consistent with housing at NSC's peer institutions (the "**Quality Standard**"). Notwithstanding the foregoing, the Parties acknowledge that the architectural styles and construction materials used at NSC's peer institutions may differ from that contemplated at the Project but the design concepts, floor plans and interior layouts and finishes, and exterior finishes and building system components of the Project will be of comparable quality.

2.3. **Schematic Design Documents Review.** Developer shall submit draft versions of the Schematic Design Documents (as defined herein) for the Project to NSC for NSC's preliminary review and comment. In developing the Schematic Design Documents, Developer will reasonably cooperate with NSC and meet with NSC representatives from time to time as reasonably requested to facilitate NSC's review of the Schematic Design Documents. During the review process, NSC may make suggestions regarding schematic designs, Project layout and other matters, and Developer shall consider such input and take reasonable steps to implement any such suggestion. Only those objections by NSC that are raised pursuant to Section 2.4 shall require any formal response by the Developer. NSC shall not be obligated to provide any written or formal response to any Schematic Design Documents progress review request.

2.4. **Schematic Design Review and Approval.** If the Developer makes any material changes to the Project Plans in the Schematic Design process, the Developer shall deliver to NSC a copy of any such revised schematic plans (the “**Revised Schematic Plans**”) for NSC’s review and reasonable approval.

(a) NSC shall provide any objections to the Revised Schematic Plans in writing to the Developer within five (5) days after receipt thereof together with a reasonably detailed explanation for the objection sufficient to permit an architect to understand and address the objection, and the Parties shall promptly meet and discuss any disagreements related thereto.

(b) To the extent necessary and provided that NSC’s objection is based on objective and reasonable grounds and not merely a subjective difference of opinion or aesthetic judgment, the Developer will amend the Revised Schematic Plans to address the objections and deliver a copy of the Revised Schematic Plans to NSC. Developer may proceed as if the Revised Schematic Plans are approved unless NSC delivers written notice to Developer within five (5) days that the Revised Schematic Plans do not address the objections raised on NSC’s first review and provide a detailed explanation of NSC’s continued objection sufficient to permit an architect to understand and address the continued objection.

(c) If the Parties are not able to resolve the objections to the Revised Schematic Plans within five (5) days following NSC’s written notice, either Party may submit such matter to Expedited Arbitration in accordance with Article 5.

(d) The Revised Schematic Plans, if any, as approved by NSC in accordance with this Section 2.4 shall be initialed and dated by the Parties and attached as counterparts of this Development Agreement.

(e) NSC’s Vice President of Finance and Business Operations, or his or her designee, is authorized to issue any approvals or take any other action on behalf of NSC required or authorized by this Section 2.4.

(f) “**Schematic Design Documents**” shall mean drawings and other documents, including plans, sections, elevations, and layouts of the buildings, and such other elements as appropriate.

2.5. **Design Development Documents Review.** Developer shall submit draft versions of the Design Development Documents (as defined herein) for the Project to NSC for NSC’s preliminary review and comment. In developing the Design Development Documents, Developer will consider input from and reasonably cooperate with NSC and meet with NSC representatives from time to time as reasonably requested to facilitate NSC’s review of the Design Development Documents. During the review process, NSC may make suggestions regarding elements, scope item, materials, construction, layout and other matters, and Developer shall take reasonable steps to implement any such suggestions. Only those objections by NSC that are raised in the context of Section 2.6 shall require any formal response by the Developer. NSC shall not be obligated to

provide any written or formal response to any Design Development Document progress review request.

## 2.6. **Design Development Documents Approval.**

(a) Upon their completion, Developer shall provide the Design Development Documents to NSC for its review and approval, which approval shall be based solely upon conformance with the Schematic Design Documents, the Quality Standard, or other applicable requirements of this Development Agreement.

(b) NSC shall provide any objections to the Design Development Documents in writing to the Developer within five (5) days after receipt thereof together with a reasonably detailed explanation for the objection sufficient to permit an architect to understand and address the objection, and the Parties shall promptly discuss any disagreements related thereto.

(c) To the extent necessary and provided that NSC's objection is based on objective and reasonable grounds and not merely a subjective difference of opinion or aesthetic judgment, the Developer will amend the Design Development Documents to address the objections and deliver a copy of the Design Development Documents to NSC. Developer may proceed as if the Design Development Documents are approved unless NSC delivers written notice to Developer within five (5) days that the Design Development Documents do not address the objections raised on NSC's first review and provide a detailed explanation of NSC's continued objection sufficient to permit an architect to understand and address the continued objection.

(d) If the Parties are not able to resolve the objections to the Design Development Documents within five (5) days following NSC's written notice, either Party may submit such matter to Expedited Arbitration in accordance with Article 5.

(e) NSC's Vice President of Finance and Business Operations, or his or her designee, is authorized to issue any approvals or take any other action on behalf of NSC required or authorized by this Section 2.6.

(f) "**Design Development Documents**" shall mean drawings and other documents, including plans, sections, elevations, typical construction details, and diagrammatic layouts of systems to fix and describe the size and character of architectural, structural, mechanical, electrical, landscaping, signage, and such other elements as appropriate.

## 2.7. **Construction Documents.**

(a) Developer shall deliver to NSC for NSC's review the final construction drawings, construction contracts, detailed specifications, and related documents (the "**Construction Documents**") required for construction of the Project or any portion thereof. The Construction Documents shall conform to and be consistent with in all material respects the approved Design Development Documents.

(b) NSC shall provide any objections to the Construction Documents in writing to the Developer within ten (10) days after receipt thereof together with a reasonably detailed explanation for the objection sufficient to permit an architect to understand and address the objection, and the Parties shall promptly discuss any disagreements related thereto.

(c) NSC's Vice President of Finance and Business Operations, or his or her designee, is authorized to issue any approvals or take any other action on behalf of NSC required or authorized by this Section 2.7.

2.8. **Failure to Make Timely Response is Deemed Approval.** In the event NSC shall fail to respond in writing to any submission within the time periods permitted herein, such failure shall be conclusively deemed to constitute NSC's approval.

2.9. **Project Milestone Schedule.** Within thirty (30) days of the Effective Date of this Development Agreement, Developer shall provide NSC a schedule setting forth the anticipated timeline for financing, construction and completion of the Project improvements; provided, such schedule is for planning purposes only and shall not be binding on Developer. The Developer shall Commence Construction, as defined in the Lease, and reach Substantial Completion, also as defined in the Lease, of the Project in accordance with the time frames set forth in Article 4 of the Lease.

2.10. **PFA Design Review and Approval Rights.** The Developer shall provide PFA, as the Project owner, same rights to review and approve the Project designs as NSC, as set forth in Sections 2.3 to 2.8 inclusive.

### ARTICLE 3. CONSTRUCTION REQUIREMENTS

3.1. **Requirements for Commencement of Construction.** Developer shall not commence construction of its Project or any portion thereof until:

(a) the Construction Documents are approved in writing or are deemed approved by NSC in accordance with the terms of this Development Agreement.

(b) State Public Works, the City of Henderson, or other governmental authority has issued any permit necessary for the commencement of the appropriate stage of construction, as required by City code or state law;

(c) any other government authority having jurisdiction over the construction of the Project has approved or taken such other action as required by law to permit commencement of construction;

(d) any necessary Governmental Approvals (defined below) of the Project or any portion thereof have been issued and a copy of any and all permits issued in connection with the development and construction of the Project or any portion thereof is provided to NSC.

3.2. The construction contracts with the general contractor for the Project shall grant NSC the right, but not the obligation, to assume the Developer's rights under the construction



contracts(s) if the Developer is in material default thereunder, and such default is not capable of being cured by Developer; provided, the right of NSC to assume the construction contract will be subordinate to any similar right of PFA or a subleasehold mortgagee.

3.3. **Code Compliance.** The Developer and its agents, contractors, sub-contractors and employees shall comply with all requirements for construction of its Project or any portion thereof which include, but are not necessarily limited to, the latest code editions adopted by the City of Henderson and the State of Nevada and other codes and regulations as referenced by them, as follows: International Building Code, the International Fire Code, the National Fire Code, the Uniform Mechanical Code, Uniform Plumbing Code, the National Electrical Code, the International Energy Conservation Code, and the County Street, Utility Standards, and Fire Department access requirements; applicable sections of the NRS and the NAC ([www.leg.state.nv.us](http://www.leg.state.nv.us)) including those related to the Energy Policy, State Fire Marshall, the Divisions/Departments of Industrial Relations, Health and Human Services and Environmental Protection; and the American with Disabilities Act Accessibility Guidelines.

3.4. **Payment and Performance Bonds.** For the benefit of PFA, the bond trustee, and NSC, Developer shall furnish, or arrange for its general contractor(s) to furnish, a 100% performance bond in the amount of the full construction costs of the Project or any portion thereof guaranteeing the faithful performance of the construction, and a payment bond for 150% of the amount of the full construction costs, guaranteeing the payment of claims of the mechanic, material men and others who furnish materials and labor in connection with the construction of the Project or any portion thereof, in a form and with a company acceptable to NSC in its reasonable discretion. NSC's Vice President of Finance and Business Operations or his or her designee is authorized to issue any approvals on behalf of NSC required by this Section 3.4.

3.5. **Public Works and Planning.** The construction and development of the Project may be subject to the provisions of Chapter 338 of the Nevada Revised Statutes (Public Works and Planning). If applicable, the Developer will be responsible for providing reports, statements of compliance and any other forms and records required by law or by the Office of the Labor Commissioner with respect to the Project. The Developer shall indemnify, defend, save and hold harmless, the Nevada System of Higher Education, NSC, the Board of Regents, and the agents and employees of each from and against any violations or alleged violation of any of the provisions of Chapter 338 of the Nevada Revised Statutes unless such violation or alleged violation is caused by NSC's insistence on a Design Standard through the Section 2 process.

3.6. **Government Regulations/Licenses.** Developer is solely responsible for obtaining all required governmental, regulatory or administrative approvals necessary to permit the development and construction of the Project (collectively, the "**Governmental Approvals**"). Developer shall pay all plan check fees to the City of Henderson or any other government agency, if applicable. If necessary, Developer will pay NSC, which will pass on the payment to the State Public Works Board. Developer, its employees, agents, contractors, subcontractors and representatives shall comply with all present and future laws, statutes, ordinances, regulations, requirements, rules and orders of all federal, state, county and municipal governments, agencies and government authorities that may be applicable to development, construction and use and/or operation of its Project. Developer shall maintain all appropriate and necessary business and operating licenses. NSC shall cooperate with Developer in connection with obtaining the Governmental Approvals and shall

provide assistance as reasonably requested by Developer in connection with obtaining such approvals.

3.7. **Right To Inspect Construction.** Upon a minimum of 24 hours advance written notice to the Developer and its general contractor during the construction period, NSC, or its designees may inspect the Project under construction or any portion thereof during normal working hours to verify compliance with approved Construction Documents and Governmental Approvals, to confirm any condition under this Development Agreement, or for any other reasonable purpose. NSC shall strictly comply with all safety precautions prescribed by Developer or its general contractors and shall not enter the construction area unless accompanied by an authorized representative of the general contractor. Developer is responsible for making arrangements for inspections by City of Henderson as the Developer determine appropriate during the construction period.

3.8. **As-Builts, Survey and Title Insurance Endorsement.** Within ninety (90) days of the completion of the construction of the Project, Developer, at its expense, shall furnish to NSC and PFA a complete set of record documents in electronic format (“CAD” and “PDF”) based upon “as built” civil, landscape, architectural, structural, electrical, mechanical, plumbing and similar plans and specifications with respect to the Project and all improvements to the Land. Developer shall also furnish to NSC upon request, at its’ expense, copies of any and all other reports which the Developer may have in connection with the Project, including, but not limited to, environmental surveys and assessments.

#### ARTICLE 4. **OTHER PROJECT REQUIREMENTS**

4.1. **Construction Drawings.** All plans and specifications for the construction of the Project shall comply with the State of Nevada laws and regulations as contained in the Nevada Revised Statutes (“**NRS**”) and Nevada Administrative Code (“**NAC**”) in the use of design professionals and contractors for the Project.

4.2. **Licensed and Insured Professionals.** Developer shall use only licensed, bonded, and responsible design professionals and contractors to perform any work, repairs, installations, or improvements on the Project or any portion thereof. Unless otherwise approved by NSC’s Vice President of Finance and Business Operations, all design professionals and contractors employed by Developer to perform any work, repair, installation, or improvement on the Project shall carry Workers’ Compensation Insurance in accordance with statutory requirements and Commercial General Liability Insurance covering their activities on the Project in amounts at least equal to the limits set forth in the Lease.

4.3. **Disadvantaged Business Reporting Requirements.** NSC supports equal opportunity for minority owned (“**MBE**”), women owned (“**WBE**”), disabled veteran owned (“**VBE**”), small business (“**SBE**”), local business enterprises (“**LBE**”) and other disadvantaged business enterprises (“**DBE**”) (collectively “Disadvantaged Businesses”) to compete for contacts awarded by NSC. In some situations, Disadvantaged Businesses may not have the depth or full capacity to meet all the requirements of large contracts. Nevertheless, NSC supports finding opportunities for such Disadvantaged Businesses to participate as subcontractors or Tier 2 suppliers in large contracts. Therefore, the Project will be subject to the following requirements:

(a) If the purchase of goods or services is anticipated to exceed \$1,000,000 at any time during terms of the construction and development of any portion of the Project, then Developer must provide, at a minimum, annual reports listing expenditures with Disadvantaged Businesses. These reports pertain only to expenditures that are directly attributable to the Project. The report must be available to NSC by September 15th of the applicable year, and should contain the following information:

(1) the type of Disadvantaged Business its name, city and state, and any certification of the Disadvantaged Business status including the entity granting the certification;

(2) if the Disadvantaged Business meets more than one definition or category each category should be identified;

(3) a description of the goods or services purchased;

(4) the amount of expenditures with the Disadvantaged Business attributed to the Project for the most recent completed fiscal year (July 1 through June 30).

(b) Definitions.

(1) LBE - Local Business Enterprise is intended to mean a business concern that is a) owned 51% or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.

(2) DBE - Disadvantaged Business Enterprise is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

(3) MBE - Minority Business Enterprise is intended to mean a business concern owned by one or more minority individuals that is at least fifty- one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

(4) WBE - Women-Owned Business Enterprise is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.

(5) VBE - Disabled Veteran Business Enterprise is intended to mean a business concern of which at least 51% of the ownership interest is held by one or more veterans with service-connected disabilities; that is organized to engage in commercial transactions; and that is managed and operated on a day-to-day basis by one or more veterans with service-connected disabilities. This includes a business which meets the above requirements that is transferred to the spouse of a veteran with a service-connected disability upon the death of the veteran, as determined by the United States Department of Veterans Affairs.

(6) SBE - Small Business Enterprise is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed \$2,000,000.

4.4. **Non-Discrimination.** Developer agrees it will not discriminate against any worker, employee or applicant, or any member of the public because of race, creed, color, handicap, national origin, age or sex, gender identity, nor otherwise commit an unfair labor practice. Developer agrees such clause will be incorporated into any and all contracts entered into with other business organizations or individuals who may perform any labor or services or provide materials in connection with the Project and shall require the same be incorporated into any subcontracts by any such organizations and individuals.

4.5. **Insurance.** Developer shall obtain prior to commencement of construction of the Project and maintain until substantial completion of the Project the insurance set forth in the Lease.

4.6. **Utility Connections.** All utilities for the Project will be provided by direct connection to local utility providers and not NSC's utility infrastructure.

4.7. **Ownership of Utility Improvements.** Utilities installed in connection with the Project will either be the property of the Subtenant, or if dedicated to a governmental authority or public utility, such dedication will be made on behalf of Subtenant. NSC shall have no obligation to pay for any utility services provided to the Premises. NSC shall not be financially responsible for any utility services provided to the Premises during the Lease Term, and Developer shall take all actions reasonably feasible to ensure that the utility companies or governmental entities providing such services do not attempt collection of fees from NSC.

4.8. **Notice of Non-Responsibility.** NSC may record a notice of non-responsibility as allowed by NRS 108.234 with respect to the construction of the Project. Developer, PFA, or their construction contractors shall obtain a surety bond in the amount of 150% of the amount of the construction contract. Developer shall record the surety bond with the Clark County Recorder's

Office before the date on which it commences construction of the Project, and shall comply with the notice and other requirements set forth in NRS 108.2415.

#### ARTICLE 5. EXPEDITED ARBITRATION IF CONSENT WITHHELD

5.1. **Send Disputes to Arbitration.** In the event of a dispute between NSC and Developer over the reasonableness of NSC withholding, delaying or conditioning its consent or approval of any matter for which NSC's consent or approval is required, then, and only in such events, Developer may submit such dispute to arbitration in the Clark County, Nevada before one (1) arbitrator by giving NSC a demand for arbitration on or prior to the date which is ten (10) business days after NSC refused to grant such consent or approval. In such arbitration NSC will have the initial burden to show that the Developer's design submittal fails to achieve the Quality Standard, Sustainability Standard, or other applicable requirements of this Development Agreement (the "**Design Standards**"); if NSC meets this burden, the Developer will then have the burden to show (i) that NSC's proposed cure is unreasonable and that an alternative cure is available that is less expensive or burdensome and achieves the Design Standards, or (ii) that it is not feasible to achieve the Design Standards because of a change in circumstances since the Effective Date, unavailability or unforeseeable changes in prices of materials or components, or similar reason.

5.2. **Notice via Email.** Notwithstanding the provisions of Section 6.2, any notices, consents, approvals, demands, or requests given by NSC or a Developer under this Article shall be given by email, with a copy sent by messenger or by overnight courier delivery service.

5.3. **Select Arbitrator.** Within three (3) business days after giving such demand for arbitration, the Parties shall in good faith seek to find a mutually acceptable arbitrator who shall be authorized solely to issue a determination that NSC was or was not reasonable in withholding consent or approval with respect to the matter in issue; and the decision and award of the arbitrator shall be made within two (2) business days of completion of the arbitration and shall be final and conclusive on the Parties.

5.4. **Dispute to AAA.** If agreement as to a mutually acceptable arbitrator is not reached within such three (3) business-day period, then either Party may, within three (3) business days thereafter, submit such dispute for arbitration before one (1) arbitrator under the Expedited Procedures provisions of the Commercial Arbitration Rules of the American Arbitration Association (AAA); provided, however, that with respect to any such arbitration:

5.5. The list of arbitrators referred to in Rule 54 shall be returned within three (3) business days from the date of receipt;

5.6. The Parties shall notify the AAA of any objections to the arbitrator appointed by telephone within two (2) business days after notice of the arbitrator designated by the AAA;

5.7. The Notice of Hearing referred to in Rule 55 shall be given at least four (4) business days in advance of the hearing;

5.8. The hearing shall be held within five (5) business days after the appointment of the arbitrator; and the additional hearing, if any, shall be held within two (2) business days after the initial hearing; and

5.9. The decision and award of the arbitrator shall be made within two (2) business days of completion of the arbitration and shall be final and conclusive on the Parties.

5.10. **Resolution and Attorney's Fees.** If any such arbitrator determines that NSC was unreasonable in not granting or withholding such consent or approval, then NSC shall be deemed to have given such consent or approval. The prevailing Party in such arbitration shall be entitled to reimbursement of all its costs incurred in any such arbitration, including attorney's fees and disbursements and the fees of all other persons engaged by it in connection with the arbitration.

5.11. **PFA Participation.** PFA shall have the right, but not the obligation to participate in any arbitration or litigation arising under this Development Agreement.

## ARTICLE 6. GENERAL

6.1. **Effectiveness.** This Development Agreement shall become effective on and only on its execution and delivery by each Party hereto.

6.2. **Notices.** Except as otherwise expressly provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

TO NSC: BOARD OF REGENTS OF THE NEVADA SYSTEM OF  
HIGHER EDUCATION  
c/o: Vice President for Finance and Business Operations  
Nevada State College  
1300 Nevada State Drive  
Henderson, NV 89002  
Attn: Kevin Butler  
Phone: (707) 992-2312  
Fax: (702) 992-2351  
Email: kevin.butler@nsc.edu

WITH A COPY TO: NEVADA SYSTEM OF HIGHER EDUCATION  
c/o Vice Chancellor for Legal Affairs  
4300 S. Maryland Parkway  
Las Vegas, NV 89119  
Attn: Nicholas G. Vaskov  
Phone: (702) 889-8426  
Fax: (702) 889-8495  
Email: nicholas\_vaskov@nshe.nevada.edu

TO DEVELOPER: American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Tony Traub  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: [ttraub@garfieldtraub.com](mailto:ttraub@garfieldtraub.com)

WITH A COPY TO: American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Cam Walker  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: [cam@camwalker.com](mailto:cam@camwalker.com)

AND A COPY TO: Ballard Rawson, Chartered  
10181 Park Run Drive, Suite 110  
Las Vegas, NV 89145  
Attention: Kris T. Ballard, Esq.  
Phone: (702) 425-3555  
Fax: (702) 722-5525  
Email: [ktb@ballardrawson.com](mailto:ktb@ballardrawson.com)

A copy of all notices given by any party under this Development Agreement shall be provided to PFA, as follows:

Public Finance Authority  
Suite 900  
22 East Mifflin Street  
Madison, Wisconsin 53703  
Attention: Scott Carper and Michael LaPierre  
Email: [scarper@pfauthority.org](mailto:scarper@pfauthority.org) and [mlapierre@pfauthority.org](mailto:mlapierre@pfauthority.org)  
Facsimile: (608) 237-2368

6.3. Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by facsimile transmission, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) Business Day after such deposit. Notice given in any other manner shall be effective only if and when received (or when receipt is refused) by the Party to be notified. A Party's address may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

6.4. **Amendment.** This Development Agreement may be amended by and only by an instrument executed and delivered by each Party hereto. No amendment of this Development Agreement shall be binding on the Developer unless and until such amendment shall be approved by the Board of Regents in accordance with the policies and procedures thereof as may be established from time to time. Furthermore, no amendment of this Development Agreement shall be effective without the consent of PFA, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.5. **Waiver.** No Party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any Party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other such right.

6.6. **Applicable Law.** This Development Agreement shall be given effect and construed by the law of the State of Nevada without regard to its conflict of law provision, and any action or proceeding arising hereunder shall be brought in the Eighth Judicial District Court of the State of Nevada and the Parties hereby agree to exclusive venue in Clark County, Nevada; provided, however, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the Parties thereto, so that it is to be brought in a United States District Court, it may be brought only in the United States District Court for the State of Nevada. Notwithstanding the foregoing, the existence, corporate powers, legal capacity, rights, privileges, powers, corporate obligations and liabilities of PFA shall be governed by the laws of the State of Wisconsin, excluding conflicts of law principles and, to the extent that any of the foregoing can be separated from other disputes under this Development Agreement, venue for any such legal proceedings shall be in any state or federal court of competent jurisdiction located in Dane County, Wisconsin.

6.7. **No Partnership; No Joint Venture.** Nothing in this Development Agreement shall be deemed in any way to create between the Parties hereto any relationship of partnership, joint venture or association, and the Parties hereto hereby disclaim the existence of any such relationship.

6.8. **Severability.** No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Development Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.

6.9. **Authority.** If Developer is a corporation, partnership, limited liability company or similar entity, the person executing this Development Agreement on behalf of Developer represents and warrants that (a) Developer is duly organized and validly existing and (b) this Development Agreement (i) has been authorized by all necessary Parties, (ii) is validly executed by an authorized officer or agent of Developer and (iii) is binding upon and enforceable against Developer in accordance with its terms. The person executing this Development Agreement on behalf of NSC represents and warrants to Developer that (c) NSC has the full right, power, and authority to enter into this Development Agreement and to perform its obligations hereunder; (d) all requisite approvals, consents, and board or committee actions necessary to authorize NSC to enter into this Development Agreement and to be bound by the provisions of this Development Agreement have been obtained or taken; and (e) this Development Agreement is a legal and valid obligation of NSC and is binding upon and enforceable against NSC in accordance with its terms.

6.10. **Time of Essence.** Time shall be of the essence with respect to the performance of the Parties' obligations under this Development Agreement.



6.11. **Interpretation.** Developer and NSC hereby agree that both Parties were equally influential in preparing and negotiating this Development Agreement, and each had the opportunity to seek the advice of legal counsel prior to the execution of this Development Agreement. Therefore, Developer and NSC agree that no presumption should arise construing this Development Agreement more unfavorably against any one Party.

6.12. **Headings.** The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

6.13. **Construction.** As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; and (c) to any section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsection, paragraph or subparagraph of this Development Agreement.

6.14. **Exhibits.** Each writing or drawing referred to herein as being attached hereto as a schedule, an exhibit or otherwise designated herein as a schedule or an exhibit hereto is hereby made a part hereof.

6.15. **Consent; Approval; Step-in Rights.** Prior to NSC terminating this Development Agreement for any reason related to breach, or an alleged breach, by Developer, NSC agrees to provide PFA with written notice of default or alleged default by Developer, and NSC agrees to provide PFA with a period of sixty (60) days after the date that NSC delivers such notice to PFA to permit PFA to remedy any such default(s) or alleged default(s) by Developer under this Development Agreement. In no event shall PFA be required to remedy any such default(s) or alleged default(s) by Developer. If PFA, at its option, elects to remedy any such default(s) or alleged default(s) by Developer, NSC agrees that it will accept performance of such remedy by PFA and shall not terminate this Development Agreement so long as PFA is diligently pursuing cure(s) to any such default(s) or alleged default(s). Developer shall have the right to assign or transfer its rights and obligations under this Development Agreement to PFA in the event that PFA remedies Developer's default(s) or alleged default(s) under this Development Agreement.

***SIGNATURES FOLLOW ON THE NEXT PAGE***

**IN WITNESS WHEREOF**, each Party hereto has executed this Development Agreement, or caused it to be executed on its behalf by its duly authorized representatives, as of the Effective Date.

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE NEVADA STATE COLLEGE**

Recommended By:

\_\_\_\_\_  
DATE

Approved By:

\_\_\_\_\_  
DATE

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK     )

This Project Development Agreement was acknowledged before me as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Notary Public

**AMERICAN PUBLIC DEVELOPMENT, LLC**  
a Nevada limited liability company

By: \_\_\_\_\_  
DATE

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK     )

This Project Development Agreement was acknowledged before me as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by Eric A. Traub, as Manager of American Public Development, LLC.

Notary Public

**EXHIBIT A**  
**THE LAND**

APN 189-03-110-002

EXHIBIT "A"  
LEGAL DESCRIPTION  
NEVADA STATE COLLEGE CITY OF HENDERSON  
CAMPUS HOUSING AT NEVADA STATE COLLEGE  
PHASE 1

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 412.58 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 698.50 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 63.33 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 140.17 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 142.25 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 121.75 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 492.92 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 520.75 FEET TO THE POINT OF BEGINNING.

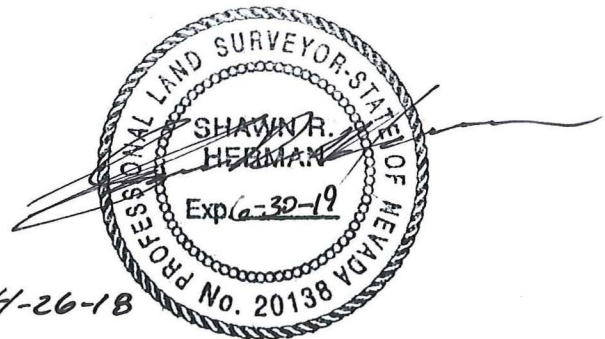
CONTAINING 7.57 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

SEE EXHIBIT "B" TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:  
SHAWN R. HERMAN, PLS  
NEVADA CERTIFICATE NUMBER 20138  
EXPIRES JUNE 30, 2019  
LOCHSA SURVEYING  
6345 SOUTH JONES BOULEVARD  
LAS VEGAS, NEVADA 89118  
TEL (702) 365-9312  
FAX (702) 365-9317



j:\survey\legal descriptions\181002 nevada state college coh campus housing phase 1 rev 3.docx

APN: 189-03-110-002

**EXHIBIT 'B'**

APN: 179-34-410-011  
CITY OF HENDERSON  
OR: 19940712: 00001493  
21.13 ACRES

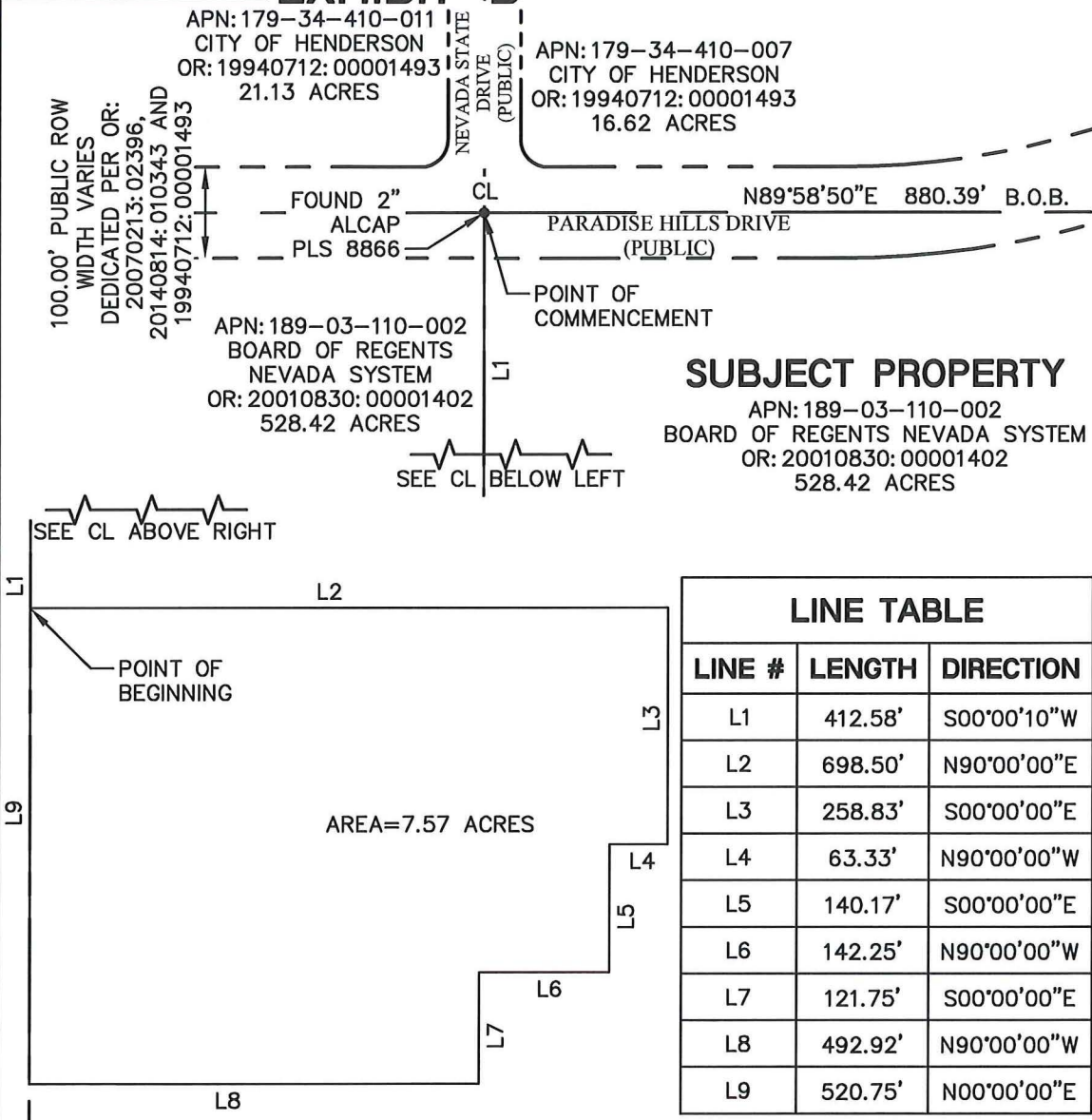
APN: 179-34-410-007  
CITY OF HENDERSON  
OR: 19940712: 00001493  
16.62 ACRES

100.00' PUBLIC ROW  
WIDTH VARIES  
DEDICATED PER OR:  
20070213:02396,  
20140814:010343 AND  
19940712:00001493

APN: 189-03-110-002  
BOARD OF REGENTS  
NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES

**SUBJECT PROPERTY**

APN: 189-03-110-002  
BOARD OF REGENTS NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	412.58'	S00°00'10"W
L2	698.50'	N90°00'00"E
L3	258.83'	S00°00'00"E
L4	63.33'	N90°00'00"W
L5	140.17'	S00°00'00"E
L6	142.25'	N90°00'00"W
L7	121.75'	S00°00'00"E
L8	492.92'	N90°00'00"W
L9	520.75'	N00°00'00"E

<b>LEGEND</b>	FOUND MONUMENTATION	<b>FILE NAME:</b>	LEGAL EXHIBIT.dwg
CENTER LINE	---	SECTION LINE	---
ROW LINE	---	PROPERTY LINE	---
EASEMENT LINE	---	ADJACENT PROPERTY LINE	---

DRAWN BY: SAP SCALE: 1"=200'  
CHECKED BY: GMM DATE: 4-25-18

**NEVADA STATE  
COLLEGE  
CITY OF HENDERSON**

PROJECT No.:  
181002

**Lochsa**  
engineering  
6345 South Jones Blvd. Suite 100  
Las Vegas, NV 89118  
Phone (702) 365-9312 - Fax (702) 365-9317

CAMPUS HOUSING AT  
NEVADA STATE COLLEGE  
(PHASE I)

SHEET No.  
**B**  
SHEET 2 OF 2

Point of Beginning : North: 558814.33' East: 338138.25'

Segment #1 : Line

Course: S0°00'00.00"E Length: 258.83'

North: 558555.50' East: 338138.25'

Segment #2 : Line

Course: N90°00'00.00"W Length: 63.33'

North: 558555.50' East: 338074.92'

Segment #3 : Line

Course: S0°00'00.00"E Length: 140.17'

North: 558415.33' East: 338074.92'

Segment #4 : Line

Course: N90°00'00.00"W Length: 142.25'

North: 558415.33' East: 337932.67'

Segment #5 : Line

Course: S0°00'00.00"E Length: 121.75'

North: 558293.58' East: 337932.67'

Segment #6 : Line

Course: N90°00'00.00"W Length: 492.92'

North: 558293.58' East: 337439.75'

Segment #7 : Line

Course: N0°00'00.00"E Length: 520.75'

North: 558814.33' East: 337439.75'

Segment #8 : Line

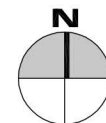
Course: N90°00'00.00"E Length: 698.50'

North: 558814.33' East: 338138.25'

-----  
Perimeter: 2438.50' Area: 329837.54 Sq. Ft.

**EXHIBIT B**  
**PROJECT PLANS**





**RECOGNITION, CONSENT AND NON DISTURBANCE  
AGREEMENT**

THIS RECOGNITION, CONSENT AND NON-DISTURBANCE AGREEMENT (the “Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2018 by and among BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, acting on behalf of the Nevada State College, a constitutional entity of the State of Nevada (together with its successors and assigns, “Landlord”); AMERICAN PUBLIC DEVELOPMENT, LLC, a Nevada limited liability company (together with its successors and assigns, “Tenant”); the PUBLIC FINANCE AUTHORITY, a unit of government and body corporate and politic of the State of Wisconsin (together with its successors and assigns, “Subtenant”); and \_\_\_\_\_ (together with its successors and assigns, “Leasehold Mortgagee”).

**W I T N E S S E T H:**

WHEREAS, Landlord is the present owner of that certain parcel of land described in Exhibit A attached hereto and made a part hereof (the “Land”); and

WHEREAS, Landlord and Tenant are simultaneously herewith entering into that certain Ground Lease Agreement for State Campus Village (the “Ground Lease”) pursuant to which Landlord leased to Tenant the Land for the purpose of development, financing, construction and management of the seven buildings of student housing totaling approximately three hundred twelve (312) beds, as shown on Exhibit B attached hereto and made a part hereof (the “Improvements”, together with the Land, hereinafter referred to as the “Premises”); and

WHEREAS, Tenant and Subtenant are simultaneously herewith entering into that certain Ground Sublease Lease Agreement for State Campus Village (the “Ground Sublease”) pursuant to which Tenant leased to Subtenant the Premises; and

WHEREAS, Subtenant has granted or is about to grant a mortgage to Leasehold Mortgagee in the aggregate principal amount of up to \$\_\_\_\_\_ to be recorded simultaneously herewith in the \_\_\_\_\_, which mortgage encumbers Subtenant’s leasehold interest in the Premises and the Ground Sublease (collectively, the “Leasehold Mortgage”); and

WHEREAS, each of Landlord, Tenant, Subtenant and Leasehold Mortgagee desire to confirm their understanding with respect to the Ground Lease, the Ground Sublease, and the Leasehold Mortgage, any future financings with respect to the Premises and other matters as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration each to the other in hand paid, the receipt and sufficiency of which are hereby acknowledged, each of Landlord, Tenant, Subtenant and Leasehold Mortgagee hereby agree to the foregoing and as follows:

1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Ground Lease.

2. Consents.

(a) The Ground Lease provides that Subtenant has the right to grant the Leasehold Mortgage, subject to Landlord approval. Landlord hereby approves the terms of the Leasehold Mortgage, as required under Section 24.2 of the Ground Lease. From and after the date hereof, (i) Leasehold Mortgagee and its successors and assigns shall be and hereby are recognized as and deemed "Leasehold Mortgagees" under the Ground Lease, (ii) the Leasehold Mortgage shall be and hereby is recognized as a "Permitted Financing" under Section 24.1 of the Ground Lease, and (iii) all conditions precedent to the Leasehold Mortgage set forth in the Ground Lease shall be deemed satisfied. The exercise of Leasehold Mortgagee's rights under the Leasehold Mortgage, in accordance with the terms and conditions of Article 24 of the Ground Lease, shall not constitute a default under the Ground Lease.

(b) Landlord approves the Ground Sublease and consents to the execution and delivery of the same. Landlord acknowledges and agrees that the Ground Sublease is permitted without Landlord consent as provided in Section 26.1 of the Ground Lease and that the restrictions on Transfer in Article 26 of the Ground Lease shall not apply to Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate and/or the Subleasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

3. Recognition and Non-Disturbance of Subtenant and Leasehold Mortgagee; New Leases.

(a) In the event of the termination of the Ground Lease, Landlord shall, in addition to providing the notices of default as required by Section 6 herein, provide Leasehold Mortgagee with written notice that the Ground Lease has been terminated, together with a statement of all sums that would at the time be due under the Ground Lease but for such termination, and of all other defaults, if any, then known to Landlord, all in accordance with the terms and conditions of Article 24 of the Ground Lease. In the event of the termination of the Ground Lease or the Ground Sublease for any reason whatsoever, Landlord shall, upon Leasehold Mortgagee's written election, (i) enter into a "New Lease" (as such term is defined in the Ground Lease), in accordance with Section 24.6 of the Ground Lease, and (ii) if required in connection with the exercise of Leasehold Mortgagee's rights under the Leasehold Mortgage, consent to a new sublease of the Premises for the remainder of the term of the Ground Sublease, effective as of the date of termination, at the Sublease Payments (as such term is defined in the Ground Sublease) and upon the same terms, covenants, and conditions of the Ground Sublease (but excluding any requirements which are not applicable or have been satisfied by Subtenant prior to termination) (a "New Sublease"), in either case of the foregoing (i) or (ii) subject only to the conditions of title as the Land is subject to on the date of the execution of the original Ground Lease and such matters arising thereafter to which Leasehold Mortgagee has consented to in writing, and to the right, if any, of any parties then in possession of any part of the Land, provided:

- i. As provided in Section 24.6 of the Ground Lease, Leasehold Mortgagee shall make written request upon Landlord for such New Lease and New Sublease consent, if required, within sixty (60) calendar days after the date Leasehold Mortgagee receives Landlord's notice of termination given pursuant to Section 3(a);

- ii. Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums that are at the time of execution and delivery thereof due pursuant to the Ground Lease regardless of such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, that Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and that have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under Section 24.6 of the Ground Lease or under the New Lease, an amount equal to the Net Income derived by Landlord from the Premises during the period from the date of termination of the Ground Lease to the date of the beginning of the Lease Term of such New Lease.

(b) Upon the execution and delivery of a New Lease, the Ground Sublease (or any New Sublease), all Sub-subleases, and management agreements shall thereupon be assigned and transferred or terminated, at Leasehold Mortgagee's election, without warranty or recourse by Landlord to the extent of its interests, if any, to the tenant under the New Lease.

4. Conveyance of Interests; Attornment. Any successor to Landlord's fee title interest in the Land shall take title subject to the terms and conditions of the Ground Lease, the Ground Sublease, the Leasehold Mortgage and this Agreement, provided, however, that upon the Landlord's sale or other conveyance of its fee interest in the Land, Tenant and Subtenant shall attorn to any subsequent owner succeeding to the fee title interest of the Land, and upon such sale or conveyance Tenant and Subtenant shall recognize such person or entity as the ground lessor of the Land under the Ground Lease. Such attornment by Tenant and Subtenant shall be effective without the execution of any further instruments.

5. Casualty and Condemnation.

(a) So long as the indebtedness, or any part of the indebtedness, secured by the Leasehold Mortgage remains outstanding and unpaid, and the Leasehold Mortgage remains of record, Landlord and Tenant agree that, as provided in Section 22.12 of the Ground Lease: (a) the Ground Lease shall not terminate or be canceled at any time upon the damage or destruction by fire or other casualty of all, substantially all, or any part of the Premises; (b) the insurance policies required to be maintained pursuant to the Ground Lease shall name Leasehold Mortgagee as an additional named insured and loss payee/ mortgagee, as its interests may appear; (c) the form of such policies and amounts thereof shall at all times be in accordance with the terms of the Leasehold Mortgage, and Leasehold Mortgagee shall be entitled at Leasehold Mortgagee's option to participate in any adjustment, settlement or compromise with respect to any insurance claim; and (d) all proceeds of such insurance policies shall be payable to Leasehold Mortgagee as loss payee (Landlord and Tenant subordinating any right to receive such proceeds to Leasehold Mortgagee), to be applied by Leasehold Mortgagee in accordance with the terms of the Leasehold Mortgage (or other applicable financing documents).

(b) Notwithstanding anything to the contrary contained herein, as provided in Section 23.1 of the Ground Lease, in the event of any taking or condemnation (either temporary or permanent), there shall first be paid to Leasehold Mortgagee such amounts as may be required by the Leasehold Mortgagee to be paid to Leasehold Mortgagee, in order of priority and Leasehold Mortgagee shall be entitled at Leasehold Mortgagee's option to participate in any compromise, settlement or adjustment with respect to the Premises.

6. Notices of Default and Cure Rights.

(a) Landlord, upon providing Tenant any notice of default under the Ground Lease or a termination of the Ground Lease, shall at the same time provide a copy of such notice to Leasehold Mortgagee, as provided in Section 24.3(a) of the Ground Lease.

(b) After such notice has been given to Leasehold Mortgagee as provided in Section 24.3(b) of the Ground Lease, Leasehold Mortgagee shall have an additional ninety (90) day period or such longer period of time as Leasehold Mortgagee reasonably requires to remedy or cause to be remedied any non-monetary default (sixty (60) day period in the case of a monetary default) for remedying (or commencing to remedy and diligently pursuing remedying) any default or causing the same to be remedied (or commencing to remedy and diligently pursuing remedying) as is given Tenant; provided that such ninety (90) day period (sixty (60) day period in the case of a monetary default) shall begin when Landlord delivers a subsequent written notice to the Leasehold Mortgagee after the period of time given to Tenant to remedy, commence remedying or cause to be remedied the defaults specified in any such notice has expired in accordance with the terms and provisions of the Ground Lease; provided, however, that in the event that any such nonmonetary default is not susceptible to cure by Leasehold Mortgagee until Leasehold Mortgagee can gain possession of the Premises, Leasehold Mortgagee's period of time to commence to cure such default shall be extended until such time as Leasehold Mortgagee gains possession of the Premises, so long as:

- i. during such extended cure period all payments of Rent are paid as required under the Ground Lease (subject to the notice and cure provisions set forth in the Ground Lease), and
- ii. Leasehold Mortgagee is reasonably diligent in its efforts to gain possession of the Premises. Landlord shall accept such performance by or at the instigation of Leasehold Mortgagee as if the same had been done by Tenant.

(c) Tenant authorizes Leasehold Mortgagee to take any such action at Leasehold Mortgagee's option in accordance with Applicable Laws and the terms and conditions of this Agreement, the Ground Lease and the Ground Sublease and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose.

(d) Notwithstanding anything contained herein or in the Ground Lease or Ground Sublease to the contrary, except as provided in Article 24 of the Ground Lease, in no event shall any act or omission of Leasehold Mortgagee (including, without limitation, the acquisition of Tenant's interest in the Ground Lease and the leasehold estate created thereby or the taking of

possession of the Premises thereon through a receiver or other means) require Leasehold Mortgagee to assume, or cause Leasehold Mortgagee to be deemed to have assumed, any obligation or liability of Tenant or Subtenant under the Ground Lease or the Ground Sublease, and Leasehold Mortgagee shall have no personal liability to Landlord or Tenant for the failure to so perform and observe any agreement, covenant or condition of Tenant or Subtenant under the Ground Lease or the Ground Sublease.

7. Amendments to Ground Lease. Neither Landlord nor Tenant will amend, modify, cancel or surrender the Ground Lease without Leasehold Mortgagee's prior written consent, and any such action taken without Leasehold Mortgagee's consent shall not be binding on Tenant or Leasehold Mortgagee or their respective successors and assigns (and the Ground Lease shall be interpreted as if such action was not taken).

8. Notices. Whenever it is provided in this Agreement that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, any of the parties by any other party or parties, or whenever any of the parties desires to give or serve upon any other party or parties any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served by hand with proof of delivery; or by mailing the same to the party by certified mail, postage prepaid, return receipt requested; or by delivery by nationally recognized overnight courier such as Federal Express, addressed as follows:

If to Landlord:

If to Tenant:

If to Subtenant:

If to Leasehold Mortgagee:

Any party may change its address for purposes hereof by notice to all other parties.

9. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Nevada without regard to the principles of conflicts of laws thereof.

(b) This Agreement shall inure to the benefit of the parties thereto, their successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Subtenant or Leasehold Mortgagee, all obligations and liabilities of Subtenant or Leasehold Mortgagee under this Agreement arising after the date of assignment shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom

Subtenant's or Leasehold Mortgagee's interest is assigned or transferred, or as otherwise provided under the Leasehold Mortgage. Notwithstanding any other provision herein, all rights, obligations and liabilities of (i) Subtenant shall terminate upon the expiration or termination of, or the sale or assignment of Subtenant's interest in, the Ground Sublease, and (ii) Leasehold Mortgagee shall terminate upon the expiration, termination, satisfaction, sale or assignment of the Leasehold Mortgage.

(c) Neither this Agreement nor any of its terms may be amended, changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing and signed by all of the parties hereto.

(d) The parties hereto shall cause this Agreement to be recorded in the land records of the Clark County Recorder's Office, Nevada, and to execute and deliver any and all other forms or documents necessary to accomplish the same.

(e) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(f) Should any provisions of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms of any such provisions shall be more strictly construed against one party or the other by reason of the rule of construction that a document is to be construed most strictly against the party who itself or its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation of this Agreement.

[No further text this page; Signature pages to follow.]

IN WITNESS WHEREOF, the undersigned party has signed this Agreement as of the day and year first above written.

Landlord:

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_) ss.:

On the \_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and (s)he acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public



Tenant:

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_) ss.:

On the \_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and (s)he acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Subtenant:

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_) ss.:

On the \_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and (s)he acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Leasehold Mortgagee:

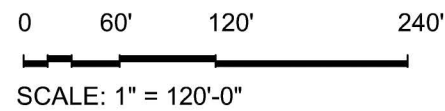
By \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_) ss.:

On the \_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and (s)he acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT B**  
**PROJECT PLANS**



# Enlarged Site Plan P1



WHEN RECORDED, RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SUBLEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT, AND FIXTURE FILING**

This SUBLEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this “*Deed of Trust*”) is executed as of [\_\_\_\_\_] , 2018, by the **PUBLIC FINANCE AUTHORITY**, a unit of government and body corporate and politic of the State of Wisconsin (“*Grantor*”), to [\_\_\_\_\_] , whose place of business is located at [\_\_\_\_\_] , as trustee under this Deed of Trust (the “*Deed-of-Trust Trustee*”), for the benefit of [\_\_\_\_\_] , whose place of business is located at [\_\_\_\_\_] , as beneficiary under this Deed of Trust (the “*Beneficiary*”), in its capacity as trustee under a Trust Indenture dated as of [\_\_\_\_\_] , 2018 (as it may be modified, amended, or supplemented from time to time, the “*Indenture*”), executed in connection with the issuance by the Grantor of its \$[\_\_\_\_\_] Student Housing Revenue Bonds ( \_\_\_\_\_ Project) Series 2018 (the “*Bonds*”). Except as provided in Section 45 herein, in the event of a conflict between the terms of this Deed of Trust and the Bonds and the Indenture, the terms of the document which shall either enlarge the interest of Beneficiary in the Subject Property, grant to Beneficiary greater financial security in the Subject Property and/or assure payment of the Bonds and all sums secured hereby in full shall control. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Indenture.

The fee owner of the real estate subject to this Deed of Trust is The Board of Regents of the Nevada System of Higher Education (the “*Board*”) on behalf of Nevada State College (the “*College*”).

American Public Development, LLC, a Nevada limited liability company (“*APD*”), is the holder of a leasehold estate in certain real property located in Clark County, Nevada more particularly described pursuant to a Ground Lease Agreement dated as of [\_\_\_\_\_] , 2018 (as it may be modified, amended, or supplemented from time to time, the “*Ground Lease*”) between the Board, as ground lessor, and APD, as ground lessee; and Grantor is the holder of a subleasehold estate in such property pursuant to a Ground Sublease Agreement dated as of

[\_\_\_\_\_], 2018 (as it may be modified, amended, or supplemented from time to time, the “*Ground Sublease*”) between APD, as ground sublessor, and Grantor, as ground sublessee.

NOW, THEREFORE, the parties act and agree as follows:

**Section 1. Grant.** For consideration paid, in order to secure the Secured Obligations (as hereinafter defined), Grantor does hereby give, grant, convey, bargain, sell, assign and transfer with power of sale unto the Deed-of-Trust Trustee, its successors and assigns, in trust for the benefit of the Beneficiary:

(a) all right, title and interest of the Grantor in and to the Ground Sublease and the subleasehold estate created thereby, including all right, title and interest of the Grantor in and to those certain lots, pieces or parcels of land with the buildings and improvements now or hereafter located thereon, situated, lying and being in the City of Henderson, County of Clark, State of Nevada, commonly known and numbered as [\_\_\_\_\_], which lots, pieces or parcels of land are more particularly bounded and described as set forth on EXHIBIT A attached hereto and made a part hereof; together with

(b) Grantor’s right, title and interest, if any, in and to all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to any such subleasehold estate, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, claim and demand whatsoever of the Grantor of, in and to the same and of, in and to every part and parcel thereof; together with

(c) all right, title and interest of the Grantor, if any, in and to the land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining any of the above-described real estate to the centerline thereof; together with

(d) all right, title and interest of Grantor in and to all fixtures now or hereafter attached to any of the aforesaid buildings and improvements; together with

(e) any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to any of the above-described property as a result of (i) the exercise of the right of eminent domain, (ii) the alteration of the grade of any street, or (iii) any other injury to or decrease in the value of any of said property, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by the Beneficiary, and of the reasonable counsel fees, costs and disbursements incurred by the Beneficiary in connection with the collection of such award or payment. The Grantor agrees to execute and deliver, from time to time, such further instruments as may be requested by the Beneficiary to confirm such assignment to the Deed-of-Trust Trustee of any such award or payment; together with

(f) all products and proceeds (including, without limitation, insurance proceeds) of any of the foregoing; together with

- (g) all books and records relating to any of the foregoing.

TO HAVE AND TO HOLD all of the above granted and described real estate, property, rights and interests (collectively, the “**Property**”), including, without limitation, the Grantor’s rights, if any, in and under the Ground Lease, unto the Deed-of-Trust Trustee, its successors and assigns, forever, upon the trust and for the purposes set forth herein; *provided*, that until the occurrence of an Default (defined below) (i) Grantor may remain in possession and control of the Property, (ii) Grantor may use, operate or manage (or cause APD or its subcontractor to use, operate or manage) the Property, and (iii) the Grantor may collect the rents and revenues for the Property; BUT IF AN DEFAULT SHOULD OCCUR, subject to any applicable notice or cure provisions (if any), in the payment of any Secured Obligation or any other obligations secured hereby, or in the terms, conditions or covenants contained in this Deed of Trust, the Secured Obligations shall, at the option of the Beneficiary, become at once due and payable, regardless of the respective maturity dates thereof, and it shall be lawful for, and upon the request of the Beneficiary it shall become the duty of, the Deed-of-Trust Trustee to advertise and sell under this Deed of Trust any or all of the Property in the manner hereinafter set forth.

The listing of specific rights or property shall not be interpreted as a limitation of general terms. This Deed of Trust constitutes a security agreement under the UCC. If Personal Property Collateral has been or may be acquired with proceeds of the Bonds, the security interest granted by this Deed of Trust is a purchase money security interest. Beneficiary may file such financing statements as necessary or appropriate to perfect the security interest granted in the Personal Property Collateral by this Deed of Trust, and this Deed of Trust is effective as a financing statement filed as a fixture filing in accordance with the UCC with respect to all fixtures now or hereafter included within the Property. Without limiting the generality or applicability of the provisions of this Deed of Trust, but in addition thereto, the Deed-of-Trust Trustee and Beneficiary will have all the rights, remedies, and recourse with respect to the Personal Property Collateral afforded a secured party by the UCC in addition to, and not in limitation of, the other rights, remedies, powers, and privileges afforded by this Deed of Trust and other applicable Requirements of Law. If the UCC or other Requirements of Law require that notice be given to Grantor prior to the disposition of the Personal Property Collateral, or part thereof, ten (10) days’ notice will be sufficient. In the event of foreclosure, if all of the Personal Property Collateral is not sold, the remainder will remain subject to the security interest granted hereby, the terms and provisions hereof, and Beneficiary’s rights and remedies granted by the UCC.

**Section 2. Obligations Secured.** Grantor makes this grant and assignment for the purpose of securing the following obligations (each, a “**Secured Obligation**” and collectively, the “**Secured Obligations**”):

- (a) payment to Beneficiary of all sums at any time owing and performance of all other obligations to Beneficiary arising under or in connection with the Bonds and payable to Beneficiary or its order, together with the payment and performance of any other indebtedness or obligations incurred in connection with the credit accommodation evidenced by the Bonds, whether or not specifically referenced therein; and
- (b) payment and performance of all obligations of Grantor under this Deed of Trust, together with all advances, payments or other expenditures made by Beneficiary or Deed-of-Trust Trustee as or for the payment or performance of any such obligations of



Grantor; (i) each other agreement, document, or instrument executed and delivered by Grantor in connection with the issuance of the Bonds and the Indenture; and (ii) all Parity Debt; and

(c) payment and performance of all obligations, if any, and the contracts under which they arise, which any rider attached to and recorded with this Deed of Trust recites are secured hereby; and

(d) payment and performance of all future advances and other obligations that the then record owner of the Subject Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of Beneficiary, when any such advance or other obligation is evidenced by a writing which recites that it is secured by this Deed of Trust; and

(e) all modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

**Section 3. Obligations.** The term “obligations” is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, joint or several, including without limitation, all principal, interest, charges, including prepayment charges and late charges, and loan fees at any time accruing or assessed on any Secured Obligation.

**Section 4. Incorporation.** All terms of the Secured Obligations are incorporated herein by this reference. All persons who may have or acquire an interest in the Subject Property are hereby deemed to have notice of the terms of the Secured Obligations and to have notice, if provided therein, that: (a) any other Secured Obligation may permit borrowing, repayment and reborrowing, and (b) the rate of interest on one or more of the Secured Obligations may vary from time to time.

**Section 5. Assignment.** For the purposes and upon the terms and conditions set forth herein, Grantor assigns to Beneficiary (the “*Assignment*”) all of Grantor’s right, title and interest in, to and under all leases, licenses, rental agreements and other agreements of any kind relating to the use or occupancy of any of the Subject Property, whether existing as of the date hereof or at any time hereafter entered into, together with all guarantees of and security for any tenant’s or lessee’s performance thereunder, and all amendments, extensions, renewals and modifications thereto (each, a “*Lease*” and collectively, the “*Leases*”), together with any and all other rents, issues and profits of the Subject Property (collectively, “*Rents*”). This Assignment, in and of itself, shall not impose upon Beneficiary any duty to produce Rents from the Subject Property, nor cause Beneficiary to be: (a) a “mortgagee in possession” for any purpose; (b) responsible for performing any of the obligations of the lessor or landlord under any Lease; or (c) responsible for any waste

committed by any person or entity at any time in possession of the Subject Property or any part thereof, or for any dangerous or defective condition of the Subject Property, or for any negligence in the management, upkeep, repair or control of the Subject Property. This is an absolute assignment, not an assignment for security only, and Beneficiary's right to Rents is not contingent upon and may be exercised without possession of the Subject Property. Grantor agrees to execute and deliver to Beneficiary, within five (5) days of Beneficiary's written request, such additional documents as Beneficiary or Deed-of-Trust Trustee may reasonably request to further evidence the assignment to Beneficiary of any and all Leases and Rents.

**Section 6. Protection of Security.** To protect the security of this Assignment, Grantor agrees:

(a) At Grantor's sole cost and expense: (i) to perform each obligation to be performed by the lessor or landlord under each Lease and to enforce or secure the performance of each obligation to be performed by the lessee or tenant under each Lease; (ii) not to modify any Lease in any material respect, nor accept, surrender under or terminate the term of any Lease; (iii) not to anticipate the Rents under any Lease; and (iv) not to waive or release any lessee or tenant of or from any Lease obligations. Grantor assigns to Beneficiary all of Grantor's right and power to modify the terms of any Lease, to accept a surrender under or terminate the term of or anticipate the Rents under any Lease, and to waive or release any lessee or tenant of or from any Lease obligations, and any attempt on the part of Grantor to exercise any such rights or powers without Beneficiary's prior written consent shall be a breach of the terms hereof.

(b) At Grantor's sole cost and expense, to defend any action in any manner connected with any Lease or the obligations thereunder, and to pay all costs of Beneficiary or Deed-of-Trust Trustee, including reasonable attorneys' fees, in any such action in which Beneficiary or Deed-of-Trust Trustee may appear.

(c) That, should Grantor fail to do any act required to be done by Grantor under a Lease, then Beneficiary or Deed-of-Trust Trustee, but without obligation to do so and without notice to Grantor and without releasing Grantor from any obligation hereunder, may make or do the same in such manner and to such extent as Beneficiary or Deed-of-Trust Trustee deems necessary to protect the security hereof, and, in exercising such powers, Beneficiary or Deed-of-Trust Trustee may employ attorneys and other agents, and Grantor shall pay necessary costs and reasonable attorneys' fees incurred by Beneficiary or Deed-of-Trust Trustee, or their agents, in the exercise of the powers granted herein. Grantor shall give prompt notice to Beneficiary of any material default by any lessee or tenant under any Lease, and of any notice of default on the part of Grantor under any Lease received from a lessee or tenant thereunder, together with an accurate and complete copy thereof.

(d) To pay to Beneficiary immediately upon demand all sums expended under the authority hereof, including reasonable attorneys' fees, together with interest thereon at the highest rate per annum payable under any Secured Obligation, and the same, at Beneficiary's option, may be added to any Secured Obligation and shall be secured hereby.

**Section 7. License.** Beneficiary confers upon Grantor a license (“*License*”) to collect and retain the Rents as, but not before, they come due and payable, until the occurrence of any Default. Upon the occurrence of any Default, the License shall be automatically revoked, and Beneficiary or Deed-of-Trust Trustee may, at Beneficiary’s option and without notice, either in person or by agent, with or without bringing any action, or by a receiver to be appointed by a court: (a) enter, take possession of, manage and operate the Subject Property or any part thereof; (b) make, cancel, enforce or modify any Lease; (c) obtain and evict tenants, fix or modify Rents, and do any acts which Beneficiary or Deed-of-Trust Trustee deems proper to protect the security hereof; and (d) either with or without taking possession of the Subject Property, in its own name, sue for or otherwise collect and receive all Rents, including those past due and unpaid, and apply the same in accordance with the provisions of this Deed of Trust. The entering and taking possession of the Subject Property, the collection of Rents and the application thereof as aforesaid, shall not cure or waive any Default, nor waive, modify or affect any notice of default hereunder, nor invalidate any act done pursuant to any such notice. The License shall not grant to Beneficiary or Deed-of-Trust Trustee the right to possession, except as provided in this Deed of Trust.

**Section 8. Permitted Leases.** Grantor shall not lease or rent the Subject Property or any portion thereof if such lease or rental would constitute, create, or result in interest on the Bonds becoming taxable for purposes of federal income tax or violate any covenants of Grantor in either the Indenture or the Tax Certificate.

**Section 9. Fixture Filing.** This Deed of Trust shall be effective as a fixture filing (“*Fixture Filing*”) from the date of recordation hereof in accordance with the Nevada enactment of the Uniform Commercial Code. In connection therewith, the addresses of Grantor, as debtor (“*Debtor*”), and of Beneficiary, as secured party (“*Secured Party*”), are set forth below. The following address of Beneficiary, as the Secured Party, is also the address from which information concerning the security interest may be obtained by an interested party:

(a) Name and address of Debtor:

Public Finance Authority  
22 East Mifflin Street  
Suite 900  
Madison, WI 53703

(b) Name and address of Secured Party:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_]

(c) Description of the types (or items) of property covered by this Fixture Filing: the fixtures, fittings, and other articles attached to the Subject Property and improvements financed or refinanced with proceeds of the Bonds, including but not limited to all machinery, equipment, material, appliances and fixtures now or hereafter installed or placed in said building or on the Subject Property for the generation or distribution of air,

water, heat, electricity, light, fuel or refrigeration or for ventilating or air conditioning purposes or for sanitary or drainage purposes, for the removal of dust, refuse or garbage, and including stoves, ranges, cabinets, laundry equipment, all elevators, awnings, window shades, venetian blinds, drapery rods and brackets, screens, floor coverings, including all rugs and carpets attached to floors, lobby furnishings and incinerators and all other similar items and things; all of the items and things so specified and all other similar items or things, whether now or hereafter placed on the Subject Property, being hereby declared to be, and in all circumstances, shall be construed to be, for and in connection with the purposes and powers of this Deed of Trust, things affixed to and a part of the Subject Property described herein; the specific enumerations herein not excluding the general (the “*Improvements*”).

(d) Description of real estate subject to this Fixture Filing, to which the collateral is attached or upon which it is located: See EXHIBIT A hereto.

(e) Debtor’s Nevada entity number: [ \_\_\_\_\_ ]

Some of the above described collateral is or is to become fixtures upon the above described real estate, and this Fixture Filing is to be filed for record in the public real estate records. This Deed of Trust secures an obligation secured by real property and any fixtures thereon and shall be governed by the provisions of the Nevada enactment of the Uniform Commercial Code.

**Section 10. Title.** Grantor warrants that, except for Permitted Encumbrances, including those disclosed in the Title Policy issued with respect hereto and to the Subject Property, Grantor lawfully possesses and holds a subleasehold interest in the Subject Property, and that this Deed of Trust is a valid lien on the Subject Property and all of Grantor’s interest therein.

**Section 11. Taxes and Assessments.** Subject to the right, if any, of Grantor to contest payment of the following pursuant to any other agreement between Grantor and Beneficiary, Grantor shall pay prior to delinquency all taxes, assessments, levies and charges imposed: (a) by any public or quasi-public authority or utility company which are or which may become a lien upon or cause a loss in value of the Subject Property or any interest therein; or (b) by any public authority upon Beneficiary by reason of its interest in any Secured Obligation or in the Subject Property, or by reason of any payment made to Beneficiary pursuant to any Secured Obligation; provided however, that Grantor shall have no obligation to pay any income taxes of Beneficiary. Promptly upon request by Beneficiary, Grantor shall furnish to Beneficiary satisfactory evidence of the payment of all of the foregoing. Beneficiary is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of any of the foregoing.

**Section 12. Performance of Secured Obligations.** Grantor shall promptly pay and perform each Secured Obligation when due.

**Section 13. Liens, Encumbrances and Charges.** Other than Permitted Encumbrances, Grantor shall immediately discharge any lien on the Subject Property. Grantor shall pay when due all obligations secured by or reducible to liens and encumbrances (other than Permitted

Encumbrances) which shall now or hereafter encumber the Subject Property, whether senior or subordinate hereto, including without limitation, any mechanics' liens.

**Section 14. Insurance.** Grantor shall insure the Subject Property in accordance with the Indenture, such policies of insurance to be maintained in accordance with the applicable terms and provisions as set forth in the Indenture.

**Section 15. Tax and Insurance Impounds.** At Beneficiary's option and upon its demand, Grantor shall, until all Secured Obligations have been paid in full, pay to Beneficiary monthly, annually or as otherwise directed by Beneficiary an amount estimated by Beneficiary to be equal to: (a) all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or may become a lien upon the Subject Property and will become due for the tax year during which such payment is so directed; and (b) premiums for fire, other hazard and mortgage insurance next due. If Beneficiary determines that amounts paid by Grantor are insufficient for the payment in full of such taxes, assessments, levies and/or insurance premiums, Beneficiary shall notify Grantor of the increased amount required for the payment thereof when due, and Grantor shall pay to Beneficiary such additional amount within thirty (30) days after notice from Beneficiary. All amounts so paid shall not bear interest, except to the extent and in the amount required by law. So long as there is no Default, Beneficiary shall apply said amounts to the payment of, or at Beneficiary's sole option release said funds to Grantor for application to and payment of, such taxes, assessments, levies, charges and insurance premiums. If a Default exists, Beneficiary at its sole option may apply all or any part of said amounts to any Secured Obligation and/or to cure such Default, in which event Grantor shall be required to restore all amounts so applied, as well as to cure any Default not cured by such application. Grantor hereby grants and transfers to Beneficiary a security interest in all amounts so paid and held in Beneficiary's possession, and all proceeds thereof, to secure the payment and performance of each Secured Obligation. Upon assignment of this Deed of Trust, Beneficiary shall have the right to assign all amounts collected and in its possession to its assignee, whereupon Beneficiary and Deed-of-Trust Trustee shall be released from all liability with respect thereto. The existence of said impounds shall not limit Beneficiary's rights under any other provision of this Deed of Trust or any other agreement, statute or rule of law. Within ninety-five (95) days following full repayment of all Secured Obligations (other than as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing any Secured Obligation), or at such earlier time as Beneficiary in its discretion may elect, the balance of all amounts collected and in Beneficiary's possession shall be paid to Grantor, and no other party shall have any right of claim thereto.

**Section 16. Damages; Insurance and Condemnation Proceeds.**

(a) (i) All awards of damages and all other compensation payable directly or indirectly by reason of a condemnation or proposed condemnation (or transfer in lieu thereof) for public or private use affecting the Subject Property; (ii) all other claims and awards for damages to or decrease in value of the Subject Property; (iii) all proceeds of any insurance policies payable by reason of loss sustained to the Subject Property; and (iv) all interest which may accrue on any of the foregoing are all absolutely and irrevocably assigned to and shall be paid to Beneficiary. All such damages, compensation, proceeds, and the like will be applied in accordance with the Indenture. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action, and may adjust, compromise,

settle and collect all claims and awards assigned to Beneficiary provided however, that in no event shall Beneficiary be responsible for any failure to collect any claim or award, regardless of the cause of the failure.

(b) In accordance with the Indenture, Beneficiary may permit insurance or condemnation proceeds held by Beneficiary to be used for repair or restoration but may impose any conditions on such use as Beneficiary deems necessary.

**Section 17. Maintenance and Preservation of Subject Property.** Subject to the provisions of any Secured Obligation, Grantor covenants:

(a) to keep the Subject Property in good condition and repair;

(b) except with Beneficiary's prior written consent, not to remove or demolish the Subject Property, nor alter, restore or add to the Subject Property if such alteration, restoration or addition would diminish the value of the Subject Property, nor initiate or acquiesce in any change in any zoning or other land classification which affects the Subject Property;

(c) to restore promptly and in good workmanlike manner any portion of the Subject Property which may be damaged or destroyed;

(d) to comply with and not to suffer violation of any or all of the following which govern acts or conditions on, or otherwise affect the Subject Property: (i) laws, ordinances, regulations, standards and judicial and administrative rules and orders; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private; and (iii) requirements of insurance companies and any bureau or agency which establishes standards of insurability;

(e) not to commit or permit waste of the Subject Property; and

(f) to do all other acts which from the character or use of the Subject Property may be reasonably necessary to maintain and preserve its value.

**Section 18. Hazardous Substances: Environmental Provisions.** Grantor, to its actual knowledge, represents and warrants to Beneficiary as follows:

(a) The Subject Property is not and has not been a site for the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as defined below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "*Hazardous Materials*").

(b) The Subject Property is in compliance with all laws, ordinances and regulations relating to Hazardous Materials (collectively, the "*Hazardous Materials Laws*"), including without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act of 1976, the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Toxic Substances Control Act and the Occupational Safety and Health Act, as any of the same may be amended, modified or supplemented from time to time, and any other applicable federal, state or local environmental laws, and any rules or regulations adopted pursuant to any of the foregoing.

(c) There are no claims or actions pending or threatened against Grantor or the Subject Property by any governmental entity or agency, or any other person or entity, relating to any Hazardous Materials or pursuant to any Hazardous Materials Laws.

(d) Grantor hereby agrees to defend, indemnify, and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns, from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including without limitation, attorneys' fees and expenses) (collectively, "**Losses**") which Beneficiary may incur as a direct or indirect consequence of the use, generation, manufacture, storage, treatment, disposal, release or threatened release, transportation or presence of Hazardous Materials in, on, under or about the Subject Property, except to the extent that such Losses are the direct result of the gross negligence or willful misconduct of Lender occurring after Lender takes possession of the Subject Property after foreclosure of a deed in lieu of foreclosure. Grantor shall pay to Beneficiary immediately upon demand any amounts owing under this indemnity, together with interest from the date of demand until paid in full at the highest rate of interest applicable to any Secured Obligation. GRANTOR'S DUTY AND OBLIGATION TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE THE CANCELLATION OF THE SECURED OBLIGATIONS AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THIS DEED OF TRUST.

(e) Grantor shall immediately advise Beneficiary in writing upon Grantor's discovery of any occurrence or condition on the Subject Property or on any real property adjoining or in the vicinity of the Subject Property that does or could cause all or any part of the Subject Property to be contaminated with any Hazardous Materials or otherwise be in violation of any Hazardous Materials Laws, or cause the Subject Property to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Hazardous Materials Laws.

**Section 19. Protection of Security.** Grantor shall, at Grantor's sole expense: (a) protect, preserve and defend the Subject Property and Grantor's title and right to possession of the Subject Property against all adverse claims; (b) if Grantor's interest in the Subject Property is a leasehold interest or estate, pay and perform in a timely manner all obligations to be paid and/or performed by the lessee or tenant under the lease or other agreement creating such leasehold interest or estate; and (c) protect, preserve and defend the security of this Deed of Trust and the rights and powers of Beneficiary and Deed-of-Trust Trustee under this Deed of Trust against all adverse claims. Grantor shall give Beneficiary and Deed-of-Trust Trustee prompt notice in writing of the assertion of any claim, the filing of any action or proceeding, or the occurrence of any damage, condemnation offer or other action relating to or affecting the Subject Property and, if Grantor's interest in the Subject Property is a leasehold interest or estate, of any notice of default or demand

for performance under the lease or other agreement pursuant to which such leasehold interest or estate was created or exists.

**Section 20. Acceptance of Trust; Powers and Duties of Deed-of-Trust Trustee.**

Deed-of-Trust Trustee accepts this trust when this Deed of Trust is executed. From time to time, to the extent required by applicable law presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or performance of any of the Secured Obligations, Beneficiary, or Deed-of-Trust Trustee at Beneficiary's direction, may, without obligation to do so or liability therefor and without notice: (a) reconvey all or any part of the Subject Property from the lien of this Deed of Trust; (b) consent to the making of any map or plat of the Subject Property; and (c) join in any grant of easement or declaration of covenants and restrictions with respect to the Subject Property, or any extension agreement or any agreement subordinating the lien or charge of this Deed of Trust, Deed-of-Trust Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trusts and the enforcement of its respective rights and remedies available under this Deed of Trust, and may obtain orders or decrees directing, confirming or approving acts in the execution of said trusts and the enforcement of said rights and remedies. Deed-of-Trust Trustee has no obligation to notify any party of any pending sale or any action or proceeding (including, but not limited to, actions in which Grantor, Beneficiary or Deed-of-Trust Trustee shall be a party) unless held or commenced and maintained by Deed-of-Trust Trustee under this Deed of Trust. Deed-of-Trust Trustee shall not be obligated to perform any act required of it under this Deed of Trust unless the performance of the act is requested in writing and Deed-of-Trust Trustee is reasonably indemnified against all losses, costs, liabilities and expenses in connection therewith.

**Section 21. Compensation; Exculpation; Indemnification.**

(a) Grantor shall pay all Deed-of-Trust Trustee's fees and reimburse Deed-of-Trust Trustee for all expenses in the administration of this trust, including reasonable attorneys' fees. Grantor shall pay Beneficiary reasonable compensation for services rendered concerning this Deed of Trust, including without limitation, the providing of any statement of amounts owing under any Secured Obligation. Beneficiary shall not directly or indirectly be liable to Grantor or any other person as a consequence of: (i) the exercise of any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Grantor under this Deed of Trust or any Lease or other agreement related to the Subject Property; or (iii) any loss sustained by Grantor or any third party as a result of Beneficiary's failure to lease the Subject Property after any Default or from any other act or omission of Beneficiary in managing the Subject Property after any Default unless such loss is caused by the willful misconduct or gross negligence of Beneficiary; and no such liability shall be asserted or enforced against Beneficiary, and all such liability is hereby expressly waived and released by Grantor.

(b) Grantor shall indemnify Deed-of-Trust Trustee and Beneficiary against, and hold them harmless from, any and all losses, damages, liabilities, claims, causes of action, judgments, court costs, attorneys' fees and other legal expenses, costs of evidence of title, costs of evidence of value, and other expenses which either may suffer or incur: (i) by reason of this Deed of Trust; (ii) by reason of the execution of this trust or the performance



of any act required or permitted hereunder or by law; (iii) as a result of any failure of Grantor to perform Grantor's obligations; or (iv) by reason of any alleged obligation or undertaking of Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants or other obligations contained in any other document related to the Subject Property, including without limitation, the payment of any taxes, assessments, rents or other lease obligations, liens, encumbrances or other obligations of Grantor under this Deed of Trust. Grantor's duty to indemnify Deed-of-Trust Trustee and Beneficiary shall survive the payment, discharge or cancellation of the Secured Obligations and the release or reconveyance, in whole or in part, of this Deed of Trust.

(c) Grantor shall pay all indebtedness arising under this Section 21 immediately upon demand by Deed-of-Trust Trustee or Beneficiary, together with interest thereon, from the date such indebtedness arises at the highest rate per annum payable under any Secured Obligation. Beneficiary may, at its option, add any such indebtedness to any Secured Obligation.

**Section 22. Substitution of Deed-of-Trust Trustees.** From time to time, by a writing signed and acknowledged by Beneficiary and recorded in the [Office of the Recorder] of the county in which the Subject Property is situated, Beneficiary may appoint another trustee to act in the place and stead of Deed-of-Trust Trustee or any successor. Such writing shall set forth the recordation date and any recording or other information required by law. The recordation of such instrument of substitution shall discharge Deed-of-Trust Trustee herein named and shall appoint the new trustee as the trustee hereunder with the same effect as if originally named Deed-of-Trust Trustee herein. A writing recorded pursuant to the provisions of this Section 22 shall be conclusive proof of the proper substitution of such new Deed-of-Trust Trustee.

**Section 23. Due on Sale or Encumbrance.** Except as permitted by the provisions of the Indenture or applicable law, if the Subject Property or any interest therein shall be sold, transferred (including without limitation, where applicable, through sale or transfer of a majority or controlling interest of the corporate stock, or any general partnership, limited liability company or other similar interests, of Grantor), mortgaged, assigned, encumbered (except for Permitted Encumbrances) or leased, whether voluntarily, involuntarily or by operation of law (each of which actions and events is called a "**Transfer**"), without Beneficiary's prior written consent, THEN Beneficiary may, at its sole option, take any of the actions set forth in the Indenture. Grantor shall immediately notify Beneficiary in writing of each Transfer.

**Section 24. Releases, Extensions, Modifications and Additional Security.** Without notice to or the consent, approval or agreement of any persons or entities having any interest at any time in the Subject Property or in any manner obligated under any Secured Obligation (each, an "**Interested Party**"), Beneficiary may from time to time, subject to terms and provisions as set forth in the Indenture, release any Interested Party from liability for the payment of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, accept additional security, and enforce, waive, subordinate or release all or a portion of the Subject Property or any other security for any Secured Obligation. None of the foregoing actions shall release or reduce the personal liability of any Interested Party, nor release or impair the priority of the lien of this Deed of Trust upon the Subject Property.

**Section 25. Reconveyance.** Upon Beneficiary's written request, Deed-of-Trust Trustee shall reconvey, without warranty, the Subject Property, or that portion thereof then covered hereby, from the lien of this Deed of Trust. The recitals of any matters or facts in any reconveyance executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, the reconveyance may describe the grantee as "the person or persons legally entitled thereto." Neither Beneficiary nor Deed-of-Trust Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance. When the Subject Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all future Rents to the person or persons legally entitled thereto. Upon Beneficiary's demand, Grantor shall pay all costs and expenses incurred by Beneficiary in connection with any reconveyance.

**Section 26. Subrogation.** Beneficiary shall be subrogated to the lien of all encumbrances, whether or not released of record, paid in whole or in part by Beneficiary pursuant to this Deed of Trust or by the proceeds of any Secured Obligation.

**Section 27. Default.** The occurrence of any of the following shall constitute a "*Default*" under this Deed of Trust: (a) Grantor shall fail to observe or perform any obligation or agreement contained herein; (b) any representation or warranty of Grantor herein shall prove to be incorrect, false or misleading in any material respect when made; or (c) any default in the payment or performance of any obligation, or any defined event of default, under any provisions of the Bonds, the Indenture, or any other contract, instrument or document executed in connection with, or with respect to, any Secured Obligation.

**Section 28. Rights and Remedies.** Upon the occurrence of any Default, and at any time thereafter, Beneficiary shall have all the following rights and remedies, in each case, to the fullest extent permitted by applicable law:

(a) Upon notice, as provided in the Indenture, to declare all Secured Obligations immediately due and payable in full.

(b) With or without notice, without releasing Grantor from any Secured Obligation and without becoming a mortgagee in possession, to cure any Default of Grantor and, in connection therewith: (i) to enter upon the Subject Property and to do such acts and things as Beneficiary or Deed-of-Trust Trustee deems necessary or desirable to protect the security of this Deed of Trust, including without limitation, to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Deed-of-Trust Trustee hereunder; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of either Beneficiary or Deed-of-Trust Trustee, is senior in priority to this Deed of Trust, the judgment of Beneficiary or Deed-of-Trust Trustee being conclusive as between the parties hereto; (iii) to obtain, and to pay any premiums or charges with respect to, any insurance required to be carried hereunder; and (iv) to employ counsel, accountants, contractors and other appropriate persons to assist them.

(c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Deed of Trust as a mortgage or to obtain specific enforcement of the covenants of Grantor under this Deed of Trust, and Grantor agrees that such

covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subsection, Grantor waives the defenses of laches and any applicable statute of limitations.

(d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to: (i) the adequacy of the security for the repayment of the Secured Obligations; (ii) the existence of a declaration that the Secured Obligations are immediately due and payable; or (iii) the filing of a notice of default; and Grantor consents to such appointment.

(e) To take and possess all documents, books, records, papers and accounts of Grantor or the then owner of the Subject Property; to make or modify Leases of, and other agreements with respect to, the Subject Property upon such terms and conditions as Beneficiary deems proper; and to make repairs, alterations and improvements to the Subject Property deemed necessary, in Deed-of-Trust Trustee's or Beneficiary's judgment, to protect or enhance the security hereof.

(f) To execute or cause Deed-of-Trust Trustee to execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. Deed-of-Trust Trustee shall give and record such notice as the law then requires as a condition precedent to a trustee's sale. When the minimum period of time required by law after such notice has elapsed, Deed-of-Trust Trustee, without notice to or demand upon Grantor, except as otherwise required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as directed by Beneficiary in its sole discretion, at public auction to the highest bidder for cash, in lawful money of the United States, payable at the time of sale. Except as required by law, neither Grantor nor any other person or entity shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Deed-of-Trust Trustee may postpone any sale of the Subject Property by public announcement at such time and place of sale, and from time to time may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Deed-of-Trust Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in said deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Deed-of-Trust Trustee, Grantor or Beneficiary, may purchase at such sale.

(g) To resort to and realize upon the security hereunder and any other security now or later held by Beneficiary concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken non-judicial proceedings, or both, and to apply the proceeds received to payment of the Secured Obligations, all in such order and manner as set forth in the Indenture.

(h) Upon sale of the Subject Property at any judicial or non-judicial foreclosure, Beneficiary may credit bid (as determined by Beneficiary in its sole discretion) all or any portion of the Secured Obligations. In determining such credit bid, Beneficiary may, but

is not obligated to, take into account all or any of the following: (i) appraisals of the Subject Property as such appraisals may be discounted or adjusted by Beneficiary in its sole underwriting discretion; (ii) expenses and costs incurred by Beneficiary with respect to the Subject Property prior to foreclosure; (iii) expenses and costs which Beneficiary anticipates will be incurred with respect to the Subject Property after foreclosure, but prior to resale, including without limitation, costs of structural reports and other due diligence, costs to carry the Subject Property prior to resale, costs of resale (e.g., commissions, attorneys' fees, and taxes), Hazardous Materials clean-up and monitoring, deferred maintenance, repair, refurbishment and retrofit, and costs of defending or settling litigation affecting the Subject Property; (iv) declining trends in real property values generally and with respect to properties similar to the Subject Property; (v) anticipated discounts upon resale of the Subject Property as a distressed or foreclosed property; (vi) the existence of additional collateral, if any, for the Secured Obligations; and (vii) such other factors or matters that Beneficiary deems appropriate. Grantor acknowledges and agrees that: (A) Beneficiary is not required to use any or all of the foregoing factors to determine the amount of its credit bid; (B) this Section does not impose upon Beneficiary any additional obligations that are not imposed by law at the time the credit bid is made; (C) the amount of Beneficiary's credit bid need not have any relation to any loan-to-value ratios specified in any agreement between Grantor and Beneficiary or previously discussed by Grantor and Beneficiary; and (D) Beneficiary's credit bid may be, at Beneficiary's sole discretion, higher or lower than any appraised value of the Subject Property.

**Section 29. Application of Foreclosure Sale Proceeds.** After deducting all costs, fees and expenses of Deed-of-Trust Trustee, and of this trust, including costs of evidence of title and attorneys' fees in connection with a sale, all proceeds of any foreclosure sale shall be applied first, to payment of all Secured Obligations (including without limitation, all sums expended by Beneficiary under the terms hereof and not then repaid, with accrued interest at the highest rate per annum payable under any Secured Obligation), in accordance with the applicable terms and provisions as set forth in the Indenture; and the remainder, if any, to the person or persons legally entitled thereto.

**Section 30. Application of Other Sums.** All Rents or other sums received by Beneficiary hereunder, less all costs and expenses incurred by Beneficiary or any receiver, including reasonable attorneys' fees, shall be applied to payment of the Secured Obligations in accordance with the applicable terms and provisions as set forth in the Indenture; provided however, that Beneficiary shall have no liability for funds not actually received by Beneficiary.

**Section 31. No Cure or Waiver.** Neither Beneficiary's, Deed-of-Trust Trustee's or any receiver's entry upon and taking possession of the Subject Property, nor any collection of Rents, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Secured Obligation, nor the exercise of any other right or remedy by Beneficiary, Deed-of-Trust Trustee or any receiver shall impair the status of the security of this Deed of Trust, or cure or waive any breach, Default or notice of default under this Deed of Trust, or nullify the effect of any notice of default or sale (unless all Secured Obligations and any other sums then due hereunder have been paid in full and Grantor has cured all other Defaults), or prejudice Beneficiary or Deed-of-Trust Trustee in the

exercise of any right or remedy, or be construed as an affirmation by Beneficiary of any tenancy, lease or option of the Subject Property or a subordination of the lien of this Deed of Trust.

**Section 32. Costs Expenses and Attorneys' Fees.** Grantor agrees to pay to Beneficiary promptly following demand the full amount of all payments, advances, charges, costs and expenses, including court costs and reasonable attorneys' fees (to include outside counsel fees and all allocated costs of Beneficiary's in-house counsel), expended or incurred by Deed-of-Trust Trustee or Beneficiary pursuant to this Section 32, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Beneficiary or any other person) relating to Grantor or in any way affecting any of the Subject Property or Beneficiary's ability to exercise any of its rights or remedies with respect thereto. All of the foregoing shall be paid by Grantor with interest from the date of demand until paid in full at the highest rate per annum payable under any Secured Obligation.

**Section 33. Power to File Notices and Cure Defaults.** Grantor hereby irrevocably appoints Beneficiary and its successors and assigns as Grantor's true attorney-in-fact to perform any of the following powers, which agency is coupled with an interest: (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Beneficiary deems appropriate to protect Beneficiary's interest; and (b) upon the occurrence of any event, act or omission which with the giving of notice or the passage of time, or both, would constitute a Default, to perform any obligation of Grantor hereunder; provided however, that Beneficiary, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Beneficiary, and Beneficiary shall not be liable to Grantor or any other person or entity for any failure to act under this Section.

**Section 34. Remedies Cumulative; No Waiver.** All rights, powers and remedies of Beneficiary and Deed-of-Trust Trustee hereunder are cumulative and are in addition to all rights, powers and remedies provided by law or in any other agreements between Grantor and Beneficiary or relating to the Secured Obligations. No delay, failure or discontinuance of Beneficiary in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy.

**Section 35. No Merger.** No merger shall occur as a result of Beneficiary's acquiring any other estate in, or any other lien on, the Subject Property unless Beneficiary specifically consents to a merger in writing.

**Section 36. Execution of Documents.** Grantor agrees, upon demand by Beneficiary or Deed-of-Trust Trustee, to execute any and all documents and instruments required to effectuate the provisions hereof.

**Section 37. Right of Inspection.** Beneficiary or its agents or employees may enter onto the Subject Property at any reasonable time for the purpose of inspecting the Subject Property and ascertaining Grantor's compliance with the terms hereof.

**Section 38. Notices.** All notices, requests and demands which Grantor or Beneficiary is required or may desire to give to the other party must be in writing, delivered to Beneficiary at the following address:


and to Grantor at its address set forth at the signature lines below, or at such other address as either party shall designate by written notice to the other party in accordance with the provisions hereof.

**Section 39. Successors; Assignment.** This Deed of Trust shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto.

**Section 40. Rules of Construction.** (a) When appropriate based on the identity of the parties or other circumstances, the masculine gender includes the feminine or neuter or both, and the singular number includes the plural; (b) the term “*Subject Property*” means all and any part of or interest in the Property; (c) all Section headings herein are for convenience of reference only, are not a part of this Deed of Trust, and shall be disregarded in the interpretation of any portion of this Deed of Trust; (d) if more than one person or entity has executed this Deed of Trust as “Grantor,” the obligations of all such Grantors hereunder shall be joint and several; and (e) all terms of Exhibit A and each other exhibit and/or rider attached hereto and recorded herewith, are hereby incorporated into this Deed of Trust by this reference.

**Section 41. Severability of Provisions.** If any provision of this Deed of Trust shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Deed of Trust.

**Section 42. Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Nevada. Venue for any legal proceeding shall be proper in the state or federal courts of competent jurisdiction located in Clark County, Nevada; *provided, that*, the existence, corporate powers, legal capacity, rights, privileges, powers, corporate obligations and liabilities of the Grantor shall be governed by the laws of the State of Wisconsin, excluding conflicts of law principles and, to the extent that any of the foregoing can be separated from other disputes under this Deed of Trust, venue for any such legal proceedings shall be in any state or federal court of competent jurisdiction located in Dane County, Wisconsin. By executing and delivering this Deed of Trust, each party hereto irrevocably: (a) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (b) waives any defense of forum *non conveniens*; and (c) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Grantor of any prior notice or procedural requirements applicable to actions or claims against or involving joint powers commissions or governmental units of the State of Wisconsin that may exist at the time of and in connection with such matter.

**Section 43. APD's Consent.** APD hereby consents to this Deed of Trust.

**Section 44. Board Consent.** The Board, on behalf of the College, hereby consents to this Deed of Trust.

**Section 45. State-Specific Provisions.** In the event of any inconsistencies between the terms and conditions of this Section 45 and the terms and conditions of this Deed of Trust, the terms and conditions of this Section 45 shall control and be binding.

**Nevada Revised Statutes:** The following covenants, Nos. 1, 2, 4 (rate of interest and default rate specified in the Indenture), 5, 6, 7 (reasonable attorneys' fees), 8 and 9, of NRS 107.030 are hereby adopted and made a part of this Deed of Trust. However, the covenants of this Deed of Trust and the Indenture shall control to the extent that those covenants are inconsistent with Covenants Nos. 1, 3, 4, 5 and 9 of NRS 107.030, and Covenants Nos. 6, 7 and 8 of NRS 107.030 shall control over the covenants of this Deed of Trust and the Indenture to the extent those covenants are inconsistent with Covenants Nos. 6, 7 and 8 of NRS 107.030.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the date first set forth above.

Grantor:

Address:

PUBLIC FINANCE AUTHORITY

22 East Mifflin Street  
Suite 900  
Madison, WI 53703

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Assistant Secretary

STATE OF WISCONSIN            )  
  : ss.  
COUNTY OF DANE                )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, who is an Assistant Secretary of the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin.

\_\_\_\_\_  
NOTARY PUBLIC



IN WITNESS WHEREOF, APD has consented to this Deed of Trust as of the date first set forth above.

APD:

Address:

AMERICAN PUBLIC DEVELOPMENT, LLC

2821 West Horizon Ridge Parkway  
Suite 120  
Henderson, NV 89074

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF NEVADA                    )  
  : ss.  
COUNTY OF CLARK                 )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, who is a \_\_\_\_\_ of American Public Development, LLC, a Nevada limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC

IN WITNESS WHEREOF, the Board, on behalf of the College, has consented to this Deed of Trust as of the date first set forth above.

BOARD:

Address:

BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION

c/o: Senior Vice President for  
Business and Finance  
University of Nevada, Las Vegas  
4505 S. Maryland Parkway  
Box 451004  
Las Vegas, NV 89154-1004

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF NEVADA                    )  
  : ss.  
COUNTY OF CLARK                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, who is a \_\_\_\_\_ of the Board of Regents of the Nevada System of Higher Education, acting on behalf of the Nevada State College, a constitutional entity of the State of Nevada.

\_\_\_\_\_  
NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION

APN 189-03-110-002

EXHIBIT "A"  
LEGAL DESCRIPTION  
NEVADA STATE COLLEGE CITY OF HENDERSON  
CAMPUS HOUSING AT NEVADA STATE COLLEGE  
PHASE 1

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 412.58 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 698.50 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 63.33 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 140.17 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 142.25 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 121.75 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 492.92 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 520.75 FEET TO THE POINT OF BEGINNING.

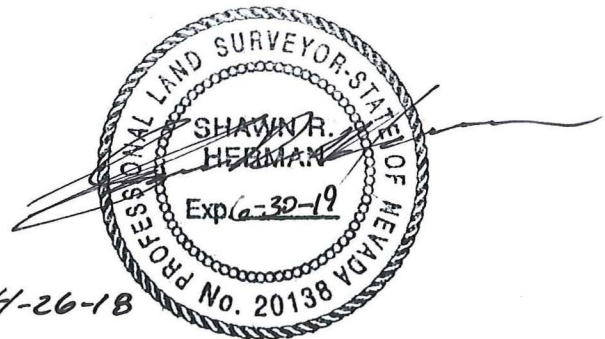
CONTAINING 7.57 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

SEE EXHIBIT "B" TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:  
SHAWN R. HERMAN, PLS  
NEVADA CERTIFICATE NUMBER 20138  
EXPIRES JUNE 30, 2019  
LOCHSA SURVEYING  
6345 SOUTH JONES BOULEVARD  
LAS VEGAS, NEVADA 89118  
TEL (702) 365-9312  
FAX (702) 365-9317



j:\survey\legal descriptions\181002 nevada state college coh campus housing phase 1 rev 3.docx

APN: 189-03-110-002

**EXHIBIT 'B'**

APN: 179-34-410-011  
CITY OF HENDERSON  
OR: 19940712: 00001493  
21.13 ACRES

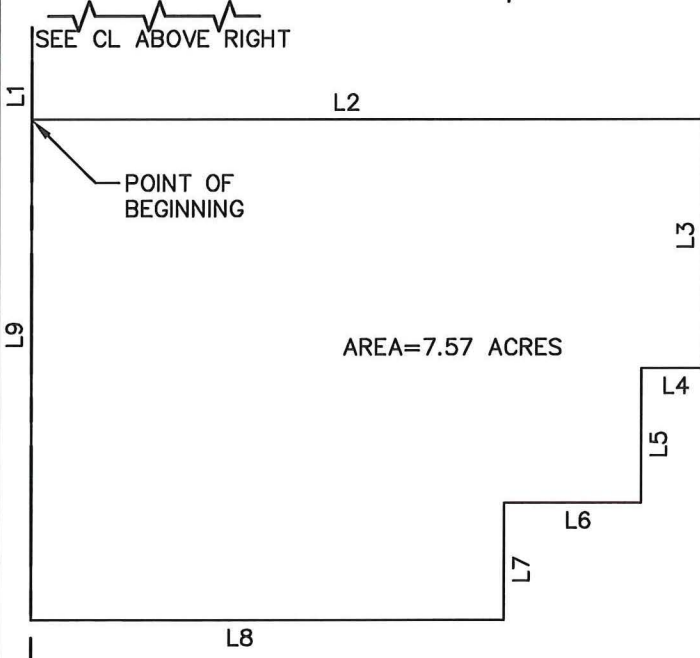
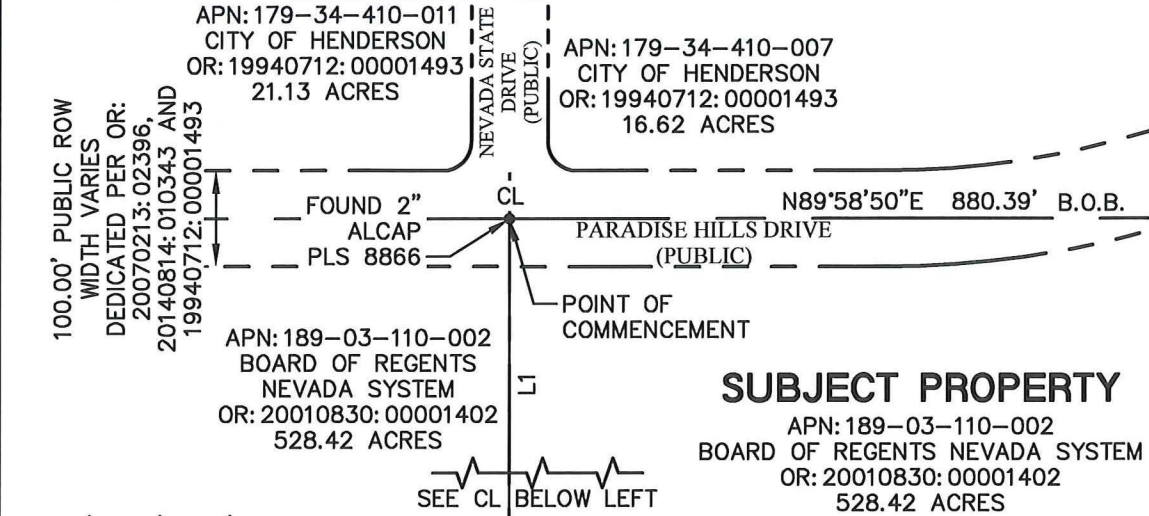
APN: 179-34-410-007  
CITY OF HENDERSON  
OR: 19940712: 00001493  
16.62 ACRES

100.00' PUBLIC ROW  
WIDTH VARIES  
DEDICATED PER OR:  
20070213:02396,  
20140814:010343 AND  
19940712:00001493

APN: 189-03-110-002  
BOARD OF REGENTS  
NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES

**SUBJECT PROPERTY**

APN: 189-03-110-002  
BOARD OF REGENTS NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	412.58'	S00°00'10\"W
L2	698.50'	N90°00'00\"E
L3	258.83'	S00°00'00\"E
L4	63.33'	N90°00'00\"W
L5	140.17'	S00°00'00\"E
L6	142.25'	N90°00'00\"W
L7	121.75'	S00°00'00\"E
L8	492.92'	N90°00'00\"W
L9	520.75'	N00°00'00\"E

<b>LEGEND</b>	FOUND MONUMENTATION	<b>FILE NAME:</b>	LEGAL EXHIBIT.dwg
CENTER LINE	-----	SECTION LINE	-----
ROW LINE	-----	PROPERTY LINE	-----
EASEMENT LINE	-----	ADJACENT PROPERTY LINE	-----

DRAWN BY: SAP SCALE: 1"=200'  
CHECKED BY: GMM DATE: 4-25-18

**NEVADA STATE  
COLLEGE  
CITY OF HENDERSON**

PROJECT No.:  
181002

**Lochsa**  
engineering  
6345 South Jones Blvd. Suite 100  
Las Vegas, NV 89118  
Phone (702) 365-9312 - Fax (702) 365-9317

CAMPUS HOUSING AT  
NEVADA STATE COLLEGE  
(PHASE I)

SHEET No.  
**B**  
SHEET 2 OF 2

Point of Beginning : North: 558814.33' East: 338138.25'

Segment #1 : Line

Course: S0°00'00.00"E Length: 258.83'

North: 558555.50' East: 338138.25'

Segment #2 : Line

Course: N90°00'00.00"W Length: 63.33'

North: 558555.50' East: 338074.92'

Segment #3 : Line

Course: S0°00'00.00"E Length: 140.17'

North: 558415.33' East: 338074.92'

Segment #4 : Line

Course: N90°00'00.00"W Length: 142.25'

North: 558415.33' East: 337932.67'

Segment #5 : Line

Course: S0°00'00.00"E Length: 121.75'

North: 558293.58' East: 337932.67'

Segment #6 : Line

Course: N90°00'00.00"W Length: 492.92'

North: 558293.58' East: 337439.75'

Segment #7 : Line

Course: N0°00'00.00"E Length: 520.75'

North: 558814.33' East: 337439.75'

Segment #8 : Line

Course: N90°00'00.00"E Length: 698.50'

North: 558814.33' East: 338138.25'

-----  
Perimeter: 2438.50' Area: 329837.54 Sq. Ft.

**Reference Information:**

Accepting Office / Agent: **First American Title Insurance Company National Commercial Services**

Property Address /Project Reference: **Vacant Land/APN 189-03-110-002, Las Vegas, NV**

File Number: **NCS-901556-HHLV**

General Description of Project: **Nevada State College Student Housing**

**INDEMNITY AGREEMENT I  
(Mechanics' Liens)**

**I N T R O D U C T I O N**

THIS INDEMNITY AGREEMENT I (this "Agreement") is made and entered into as of , by **Board of Regents of the Nevada System of Higher Education on behalf of the Nevada State College** (such named Persons, along with any other Person who executes this Agreement, individually and collectively, the "Indemnitor") in favor of FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation, its affiliates, subsidiaries, and agents (collectively "First American").

**R E C I T A L S :**

- A.** Indemnitor is the owner of, and/or has a material interest in, the Property or a transaction involving the Property (defined below).
- B.** In connection with the Project, Construction of certain improvements has commenced or will commence on the Property, and Indemnitor has entered in to that certain Contract for Services of Independent Contractor dated as of June 26, 2017, by and between the Indemnitor and Capriati Construction Corporation for grading services (the "Grading Contract") on a portion of the Site which includes the Property (defined below).
- C.** In connection with a contemplated transaction involving the Property, First American has been requested to issue one or more Title Policies in respect to the Property insuring against loss or damage by reason of Mechanics' Liens arising from the Grading Contract.
- D.** In connection with future transactions, First American may issue one or more Title Policies insuring against loss or damage by reason of such Mechanics' Liens. If First American, in its discretion, elects to issue a Title Policy for the Property, it will do so in material reliance on each of the covenants, agreements, representations, and warranties of Indemnitor set forth in this Agreement, and First American would not have issued a Title Policy but for such covenants, agreements, representations, and warranties of Indemnitor.

NOW, THEREFORE, the parties hereto agree as follows:

**A G R E E M E N T :**

- 1. DEFINITIONS:** As used herein, the following terms shall have the following meanings:



<b>Construction:</b>	Any and all work, labor, services, construction, alteration, maintenance, repair, and/or placement or segregation of materials, whether heretofore or hereafter furnished, which may give rise to the right for liens to be filed against the Property under the applicable statutes and/or equitable principles of the State, that may be a result of that certain Grading Contract between the Indemnitor and Capriati Construction Corporation dated June 19th, 2017, but only as to the work done under said contract.
<b>Construction Costs:</b>	All costs, fees, expenses, and/or obligations for or in connection with the Construction.
<b>Effective Date:</b>	The date this Agreement becomes effective in accordance with Paragraph 3 below.
<b>Mechanics' Liens:</b>	All liens or rights to lien against the Property which attach or are claimed against the Property due to Construction under the Grading Contract.
<b>Person:</b>	A natural person, or an artificial person (including, without limitation, a corporation, partnership, limited liability company, trust, or other artificial person), as the context may require.
<b>Policy Date:</b>	The "Date of Policy" as indicated on Schedule A of a Title Policy.
<b>Project:</b>	The work or works of improvement generally described in the "General Description of Project" line of the Reference Information.
<b>Property:</b>	That certain real property as described on <b>Exhibit A</b> attached hereto and incorporated herein by reference.
<b>Property Owner:</b>	The Person or Persons that own(s) the Property.
<b>Reference Information:</b>	The informational items indicated on the header of page one of this Agreement.
<b>State:</b>	The state, commonwealth, territory, or similar political subdivision in which the Property is located.
<b>Title Policy(ies):</b>	Policy or policies of title insurance issued by First American with respect to the Property.

**2. REPRESENTATIONS AND WARRANTIES.** As of the Effective Date, Indemnitor represents and warrants to First American as follows: (a) except as otherwise previously disclosed in writing to First American, all Construction Costs relating to the Grading Contract that are currently due and owing have been timely paid; (b) the Property Owner has committed funds sufficient to pay all Construction Costs applicable to the Grading Contract; (c) except as otherwise previously disclosed in writing to First American, there are no Mechanics' Liens filed against the Property related to the Grading Contract; (d) Indemnitor has no knowledge of any potential Mechanics' Liens that may be filed against the Property due to untimely payments of or disputes regarding Construction Costs related to the Grading Contract.

### **3. EFFECTIVE DATE AND TERM.**

**3.1. Effective Date.** The Effective Date of this Agreement shall be the earlier of the date First American issues or becomes contractually obligated to issue its Title Policy in connection with the Property. Where First American issues more than one Title Policy in connection with the Property, the Effective Date shall be the earliest Policy Date of the respective Title Policies. Indemnitor acknowledges and agrees that delivery of this Agreement by Indemnitor to First American shall not be deemed a commitment to issue a Title Policy for the Property. First American has no obligation or duty to Indemnitor, Property Owner, or any other person to accept this Agreement or, in the future, to issue a Title Policy for the Property solely by reason of this Agreement.

**3.2. Term.** Upon acceptance of this Agreement by First American as evidenced by the issuance of a Title Policy, this Agreement shall remain in effect until terminated by written agreement signed by each of Indemnitor and First American. Indemnitor acknowledges and agrees that First American may rely on this Agreement to issue a Title Policy at any time without notice to or further approval of Indemnitor.

### **4. MULTIPLE INDEMNITORS.**

**4.1. Joint and Several.** If there is more than one Indemnitor under this Agreement, then all of the obligations contained in this Agreement shall be the joint and several obligations of each and every Indemnitor. Each Indemnitor shall be fully liable to First American even if another Indemnitor is not liable for any reason, including the failure of such Indemnitor to execute this Agreement.

**4.2. Waiver and Release.** First American has the right, in its discretion and without notice to or consent by Indemnitor, to (a) waive any provision of this Agreement as it relates to any Indemnitor, at any time or from time to time, without providing the same or similar waiver for the benefit of any other Indemnitor, and/or (b) release any Indemnitor from any or all obligations under this Agreement at any time or from time to time, without releasing any other Indemnitor.

## **5. INDEMNIFICATION OBLIGATIONS AND RELATED COVENANTS.**

**5.1. Payment of Construction Costs.** Indemnitor covenants and agrees that Indemnitor shall cause all Construction Costs on the Property related to the Grading Contract to be paid promptly and in full prior to the time for filing any Mechanics' Liens related thereto.

**5.2. Indemnity.** In addition to any other rights or remedies available to First American at law or in equity, Indemnitor agrees to pay, protect, defend, indemnify, hold and save harmless First American from and against any and all liabilities, claims, obligations, losses, costs, charges, expenses, causes of action, suits, demands, judgments, and damages of any kind or character whatsoever, including, but not limited to, actual attorneys' fees and costs (including appellate fees and costs) incurred or sustained by First American, and actual attorneys' fees awarded against First American, directly or indirectly, by reason of, relating to, or arising under any Title Policy relating to Mechanics' Liens arising from the Grading Contract, or in any other action at law or in equity under any theory of recovery as a result of the existence of Mechanics' Liens arising from the Grading Contract, and only the Grading Contract. For the avoidance of doubt, it is the intent of the parties that all loss, cost, or expense relating to Mechanics' Liens arising from the Grading Contract, but only the Grading Contract, will be borne by Indemnitor, and not by First American.

**5.3. Duty to Notify First American.** Indemnitor shall notify First American in writing if Indemnitor is in any manner notified or becomes aware: (a) of a claim or dispute which relates to Mechanics' Liens arising from the Grading Contract; (b) of the filing or commencement of any action at law or in equity or any judicial or non-judicial proceeding (including mediation or arbitration) relating to Mechanics' Liens arising from the Grading Contract, but only the Grading Contract; (c) that the Property Owner no longer has committed funds sufficient to complete the work to be performed under the Grading Contract; and/or (d) of any untimely payments of or disputes regarding Construction Costs that may give rise to a Mechanics' Lien arising from work done under the Grading Contract. Indemnitor agrees to notify First American in writing of any such matter as soon as practicable, but in no event later than seven (7) days from Indemnitor's being notified or becoming aware of such matter.

**5.4. Rights and Obligations.** Indemnitor acknowledges and agrees that First American has a duty of good faith to its insured under any Title Policy. Therefore, upon the filing of any action at law or in equity or the assertion of any claim, cause of action, or judicial or non-judicial proceeding relating to Mechanics' Liens arising from the Grading Contract, or at any other time which First American deems it necessary to protect itself or its insured under a Title Policy in light of First American's duties, First American shall have the right, but not the obligation, (1) to take such action as First American deems necessary to protect its interests and those of its insured under any Title Policy, and/or (2) to require that Indemnitor, at Indemnitor's sole cost and expense, promptly do one or more of the following:

- (a) Cause a valid release of any Mechanics' Lien relating to the Grading Contract to be filed of record in the proper governmental office.
- (b) Cause to be recorded with respect to any Mechanics' Lien arising from the Grading Contract a bond releasing the Property from the effect of such Mechanics' Lien, should such bond be available and effective in removing the effect of such Mechanics' Lien from the Property as a matter of law.
- (c) In situations where affirmative legal action or proceedings at law or in equity are necessary to discharge, eliminate, or remove any Mechanics' Lien arising from the Grading Contract, cause counsel selected by First American to institute such action or proceeding as is necessary to discharge, eliminate or remove such Mechanics' Lien. Indemnitor may object to First American's choice of counsel for reasonable cause. Indemnitor agrees to cause such counsel to keep First American apprised as to the status of such action or proceeding, at no cost to First American.
- (d) If an action or proceeding concerning any Mechanics' Lien relating to the Grading Contract is instituted by a third party, cause such action or proceeding to be timely defended and resisted by counsel selected by First American, which counsel will protect First American and any and all insured(s) to whom First American may have potential liability as a result of the said Mechanics' Lien. Indemnitor may object to First American's choice of counsel for reasonable cause. Indemnitor agrees to cause such counsel to keep First American apprised as to the status of such action or proceeding, at no cost to First American.

- (e) If the payment of a sum of money will discharge, eliminate, or remove the effect of any Mechanics' Lien against the Property arising under the Grading Contract, pay such sum as is sufficient to discharge, eliminate, or remove such Mechanics' Lien in a manner legally sufficient to effect the release of such Mechanics' Lien of record, and deliver documents evidencing such payment to First American, in a form satisfactory to First American.
- (f) Take such action with respect to any Mechanics' Lien arising from the Grading Contract as First American authorizes Indemnitor in writing to undertake, provided that any such authority shall not be a waiver by First American to require Indemnitor at any time to comply with the foregoing subparagraphs of this Paragraph above, within ten (10) days of First American's written revocation of authority to take action other than that under any other subparagraphs of this Paragraph, and demand that Indemnitor comply with any other subparagraphs of this Paragraph.

Indemnitor covenants and agrees to cooperate with First American and to act diligently and in good faith in connection with First American's rights under this Paragraph 5.4.

**5.5. Interest.** Indemnitor agrees that any sums which are actually advanced or incurred by First American pursuant to this Agreement or by its exercise of any rights hereunder shall be repaid by Indemnitor to First American within ten (10) days of Indemnitor's receipt of First American's written demand therefor, together with interest thereon at four percent (4%) above the prime rate as published in the Wall Street Journal as of the date such sum was first advanced by First American, and continuing until it is repaid in full, but in no event shall such rate of interest exceed the lesser of: (a) ten percent (10%) per annum, or (b) the maximum rate permitted by law in the State.

**5.6. Determination of Coverage.** Any determination of coverage by First American shall be conclusive evidence that the matter is within the Title Policy coverage as to Mechanics' Liens relating to the Grading Contract for purposes of this Agreement. Indemnitor acknowledges and agrees that Indemnitor has no right to participate in First American's coverage decisions. If First American accepts the defense of a matter within the Title Policy as to the Record Matters with a reservation of rights, then all costs, damages, expenses, and legal fees actually incurred by First American shall be deemed within the terms and obligations of Indemnitor under this Agreement even if the matter is subsequently determined by a court to not be within the Title Policy as to the Record Matters.

**6. REMEDIES.** Indemnitor specifically acknowledges that upon any default by any Indemnitor under this Agreement, First American shall have the right to exercise any and all remedies available at law, in equity, or under this Agreement against any, some, or all of the Indemnitors, including but not limited to injunctive relief, specific performance, damages, self-help, and/or resort to any collateral held by First American to secure the obligations of Indemnitor under this Agreement.

**7. SUBROGATION AND SUBORDINATION.** Indemnitor hereby unconditionally grants to First American any and all rights of subrogation Indemnitor may have with respect to Mechanics' Liens covered hereby. Indemnitor agrees to promptly execute any documents with respect to such Mechanics' Liens or any other matter relating to this Agreement requested by First American with respect to such right of subrogation and to deliver same to First American. Indemnitor hereby subordinates any and all debts owed to any one Indemnitor from any other Indemnitor to the obligations owed to First American under this Agreement. Indemnitor acknowledges and agrees that First American is subrogated under its Title Policy to any obligations of Indemnitor that may be owed to First American's insured under such Title Policy, and nothing in this Agreement modifies, amends, replaces, or supersedes First American's rights under its Title Policy.

## **8. FINANCIAL INFORMATION.**

**8.1. Representations and Warranties Regarding Financial Information.** Each Indemnitor represents and warrants to First American as follows regarding the financial information delivered with respect to such Indemnitor: (a) such financial statements are true, complete, accurate, and correct in all material respects; (b) such financial statements disclose all material financial information regarding Indemnitor; (c) such financial statements fairly and accurately present the financial condition and operations of Indemnitor; and (d) since the date of the financial statements as reflected thereon and the Effective Date, there has been no material adverse change in the financial condition of Indemnitor.

**8.2. Covenants Regarding Financial Information.** Should any Indemnitor be notified or become aware of any event which could be a material adverse change in the financial condition of such Indemnitor, then such

Indemnitor shall provide written notice to First American as soon as practicable, but in no event later than ten (10) business days after such Indemnitor is notified or becomes aware of such event. Upon request by First American, each Indemnitor further agrees to deliver to First American updated financial information. Each Indemnitor agrees that by delivery thereof, such Indemnitor shall be deemed to make all the same representations and warranties as to the updated financial information set forth above, except as otherwise disclosed in writing to First American concurrently with the delivery of the updated financial information.

**9. WAIVERS AND RELATED COVENANTS.** In the event that Indemnitor is not the Property Owner, Indemnitor understands and agrees that First American has no obligation to secure an indemnity from the Property Owner. Indemnitor agrees that the validity of this Agreement and the obligations of Indemnitor hereunder shall in no way be terminated, affected, limited, or impaired by reason of (a) the assertion by First American of any rights or remedies which it may have under any agreement or cause of action against any other Person (including but not limited to Property Owner); (b) First American's failure to exercise, or delay in exercising, any such right or remedy that First American may have against any other Person (including but not limited to Property Owner); (c) First American's failure to exercise, or delay in exercising, any right or remedy First American may have hereunder or in respect to this Agreement; (d) the commencement of a case under Title 11 of the United States Code and/or any similar State insolvency or creditors' rights laws by or against any Person (including but not limited to Property Owner); or (e) Indemnitor's ownership interest in the Property or lack thereof. Indemnitor further covenants that this Agreement shall remain and continue in full force and effect as to any Title Policies issued at any time by First American with respect to the Property and that First American shall not be under a duty to protect, secure, or enforce any rights it may have under any indemnity agreement or any other right against any third party, and that other indulgences or forbearances may be granted under any or all of such documents, all of which may be made, done or permitted without notice to, or further consent of, Indemnitor. First American may, at its option, proceed directly and at once, without notice, against any Indemnitor to collect and recover the full amount of the liability hereunder or any portion thereof, without proceeding against the Property Owner or any other Person. Indemnitor hereby waives and relinquishes (f) any right or claim of right to cause a marshaling of any Indemnitor's assets; (g) all rights and remedies accorded by applicable law to indemnitors or guarantors, except any rights of subrogation which Indemnitor may have, provided that the assurances and obligations provided for hereunder shall not be contingent upon the existence of any such rights of subrogation; (h) notice of acceptance hereof and of any action taken or omitted in reliance hereon; (i) presentment for payment, demand of payment, protest or notice of nonpayment or failure to perform or observe, or other proof, or notice or demand; (j) any defense based upon an election of remedies by First American, including without limitation an election to proceed in a manner which has impaired, eliminated or otherwise destroyed Indemnitor's rights of subrogation and reimbursement, if any, against the Property Owner or any third party; (k) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (l) the defense of the statute of limitations in any action hereunder or in any action for the collection or performance of any obligations covered by this Agreement; (m) and any duty on the part of First American to disclose to Indemnitor any facts First American may now or hereafter know about the Property Owner, since Indemnitor acknowledges that Indemnitor is fully responsible for being and keeping informed of the financial condition of the Property Owner and of all circumstances bearing on the risk of nonperformance of any obligations covered by this Agreement.

**10. NOTICE.** Any notices, demands or communications under this Agreement between Indemnitor and First American shall be in writing, shall include the Reference Information, and may be given either by commercial overnight delivery service, or by mailing via first-class United States certified mail, postage prepaid, return receipt requested. Any such notice, demand, or communication must be addressed to each party as set forth on the signature page of this Agreement. If the address for First American is not completed on the signature page, notice to First American shall be given to First American's office for the State. All notices given in accordance with the requirements in this Paragraph shall be deemed to be received as of the earlier of (a) actual receipt by the addressee thereof, or (b) the expiration of five (5) business days after depositing same with the commercial overnight delivery carrier or the United States Postal System, as applicable.

**11. MISCELLANEOUS.**

**11.1. No Waiver.** No delay, error, or omission by First American in exercising any right or power under this Agreement shall impair any such right or power or be construed as a waiver thereof. A waiver by First American of a breach of any of the covenants, agreements, restrictions, obligations, or conditions of this Agreement with respect to the Indemnitor shall not be construed as a waiver of any succeeding breach of the same or other

covenants, agreements, restrictions, obligations or conditions under this Agreement. No waiver of any of First American's rights or powers under this Agreement is effective unless in writing and executed by First American.

**11.2. No Third Party Beneficiaries.** This Agreement is only between Indemnitor and First American, and is not intended to be, nor shall it be construed as being, for the benefit of any third party.

**11.3. Partial Invalidity.** If any term, provision, condition, or covenant of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

**11.4. Modification or Amendment.** Any alteration, change, modification, amendment, or supplement to this Agreement or any documents incorporated herein, in order to become effective, can only be made by written instrument executed by all parties hereto.

**11.5. Execution in Counterpart.** This Agreement and any alteration, change, modification, amendment or supplement to this Agreement may be executed by Indemnitor in several counterparts, and as so executed, will constitute one agreement binding on all Indemnitors, notwithstanding that all Indemnitors are not signatories to the original or the same counterpart. Any signature page may be detached from its counterpart and attached to another counterpart so as to form one complete document. Counterparts executed and delivered by electronic means, including but not limited to facsimile or portable document format (PDF), shall be fully effective and binding and shall constitute originals.

**11.6. Qualification; Authority.** Each natural person executing this Agreement on behalf of an Indemnitor which is an artificial person represents, warrants, and covenants to First American that (a) such artificial person is duly formed, in good standing, and authorized to do business in the State, (b) such natural person is duly authorized to execute and deliver this Agreement on behalf of such artificial person in accordance with authority granted under the organizational documents of such artificial person, and (c) such artificial person is bound under the terms of this Agreement.

**11.7. Merger of Prior Agreements and Understandings.** This Agreement and other documents incorporated herein by reference contain the entire understanding and agreement between the parties relating to the obligations of the parties with respect to Mechanics' Liens covered hereby, and all prior or contemporaneous agreements, understandings, representations, warranties, and statements, whether oral or written, shall be of no force or effect.

**11.8. Jurisdiction and Venue.** Indemnitor hereby submits to the personal jurisdiction of any state or federal court of First American's choosing having subject matter jurisdiction with respect to this Agreement, and Indemnitor waives any objection to venue therein should any action at law or in equity be necessary to enforce or interpret this Agreement. If any action at law or in equity is necessary to enforce or interpret this Agreement, then the prevailing party in such action shall be entitled to recover from the other party the prevailing party's actual attorneys' fees and other expenses incurred in connection with such action or proceeding in addition to its actual court costs.

**11.9. Other.** This Agreement is to be interpreted according to the laws of the State and is to be construed according to its fair meaning. All parties contributed materially to the preparation and negotiation of this Agreement, and this Agreement is not to be construed against any party. Titles and captions in this Agreement are for convenience only and are not part of the substance of this Agreement. The introduction, recitals, and Reference Information set forth hereinabove are all incorporated into this Agreement as material and essential terms of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number will each be deemed to include the others wherever and whenever the context so dictates. This Agreement inures to the benefit of and binds the personal representatives, successors, heirs, and assigns of the parties hereto.

**12. SECURITY.** Indemnitor has provided or will provide security for this Agreement to First American as follows:

- |                                     |                                       |                          |  |
|-------------------------------------|---------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <b>None at this time</b>              | <input type="checkbox"/> | <b>Letter of Credit Agreement w/ Sight Draft</b> |
| <input type="checkbox"/>            | <b>Security Agreement*</b> (Cash)     | <input type="checkbox"/> | <b>Control Agreement</b>                         |
| <input type="checkbox"/>            | <b>Security Agreement*</b> (Non-Cash) | <input type="checkbox"/> | <b>Deed of Trust / Mortgage / Security Deed</b>  |
| <input type="checkbox"/>            | <b>Security Agreement**</b> (Other)   | <input type="checkbox"/> | <b>Other:</b>                                    |

(**Note:** If security is to be taken, additional forms must be executed. *Please be advised that additional documents may be needed to perfect a security interest. Please follow directions on said forms as to additional requirements or consult your local underwriter.*)

A breach by an obligor, pledgor or debtor under any of the foregoing documents as well as any documents which may be referenced in such documents shall be deemed a breach by Indemnitor under this Agreement. Unless otherwise agreed in writing, any sums held by First American as security may be held by First American in its general accounts and not deposited into an interest bearing account. Indemnitor understands that as a result of maintaining its accounts with a financial institution and its on-going banking relationship with the specific financial institution, First American may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from the financial institution ("collateral benefits"). Indemnitor agrees that any and all such collateral benefits belong solely to First American and First American has no obligation to account to Indemnitor for the value of any such collateral benefits. If the funds are deposited into a special interest bearing account, all such interest will be added to and retained in the account as part of the security for First American. Any such interest earned will be attributed for tax purposes to the Indemnitor depositing same.

**13. ESTOPPEL. NOTWITHSTANDING ANY POSSIBLE DIFFERENCE IN THE PARITY OF THE PARTIES HERETO, INDEMNITOR UNDERSTANDS THAT FIRST AMERICAN IS UNDERTAKING A RISK SIGNIFICANTLY GREATER THAN THAT UNDERTAKEN IN THE NORMAL COURSE OF PROVIDING TITLE INSURANCE POLICIES AND RELATED SERVICES BY ENTERING INTO THIS AGREEMENT AND ISSUING POLICIES OF TITLE INSURANCE IN RELIANCE ON THIS AGREEMENT AND EACH AND EVERY ONE OF THE COVENANTS, AGREEMENTS, REPRESENTATIONS, AND WARRANTIES OF INDEMNITOR CONTAINED HEREIN. THEREFORE, INDEMNITOR HEREBY DECLARES ITS WILLINGNESS TO ENTER INTO THIS AGREEMENT AND TO INDUCE FIRST AMERICAN TO ACCEPT THIS AGREEMENT, REALIZING THAT INDEMNITOR'S BEST INTEREST, IN THE OPINION OF INDEMNITOR, IS BEING SERVED THEREBY.**

[Signature page follows]

\* Requires a UCC Financing Statement to be executed and filed.

\*\* May require a UCC Financing Statement to be executed and filed.

**NOTICE:**  
**THIS AGREEMENT CONTAINS PROVISIONS WHICH PERSONALLY OBLIGATE INDEMNITOR. IT IS STRONGLY RECOMMENDED THAT INDEMNITOR CONSULT LEGAL COUNSEL PRIOR TO EXECUTING THIS AGREEMENT.**

**INDEMNITOR:**

Board of Regents of the Nevada System of  
Higher Education on behalf of the Nevada  
State College

By: \_\_\_\_\_  
Name: By:  
Title:

**Social Security or Tax I.D. No.**

**Social Security or Tax I.D. No.**

\_\_\_\_\_

\_\_\_\_\_

**Tax Payer Name:**

**Tax Payer Name:**

\_\_\_\_\_

\_\_\_\_\_

**Notice Address: Vacant Land/APN 189-03-110-002,  
Las Vegas, NV**

**Notice Address:**

\_\_\_\_\_

\_\_\_\_\_

**ADDRESS FOR NOTICE TO FIRST AMERICAN:**

(If this information is not completed, please see Paragraph 10.)

**Notice Address: 2500 Paseo Verde Parkway, #120,  
Henderson, NV 89074**

**Notice Address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**File Number: NCS-901556-HHLV**



APN 189-03-110-002

EXHIBIT "A"  
LEGAL DESCRIPTION  
NEVADA STATE COLLEGE CITY OF HENDERSON  
CAMPUS HOUSING AT NEVADA STATE COLLEGE  
PHASE 1

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 412.58 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 698.50 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 63.33 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 140.17 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 142.25 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 121.75 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 492.92 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 520.75 FEET TO THE POINT OF BEGINNING.

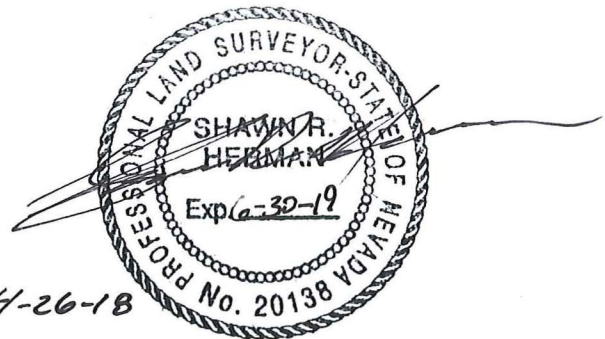
CONTAINING 7.57 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

SEE EXHIBIT "B" TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:  
SHAWN R. HERMAN, PLS  
NEVADA CERTIFICATE NUMBER 20138  
EXPIRES JUNE 30, 2019  
LOCHSA SURVEYING  
6345 SOUTH JONES BOULEVARD  
LAS VEGAS, NEVADA 89118  
TEL (702) 365-9312  
FAX (702) 365-9317



j:\survey\legal descriptions\181002 nevada state college coh campus housing phase 1 rev 3.docx

APN: 189-03-110-002

**EXHIBIT 'B'**

APN: 179-34-410-011  
CITY OF HENDERSON  
OR: 19940712: 00001493  
21.13 ACRES

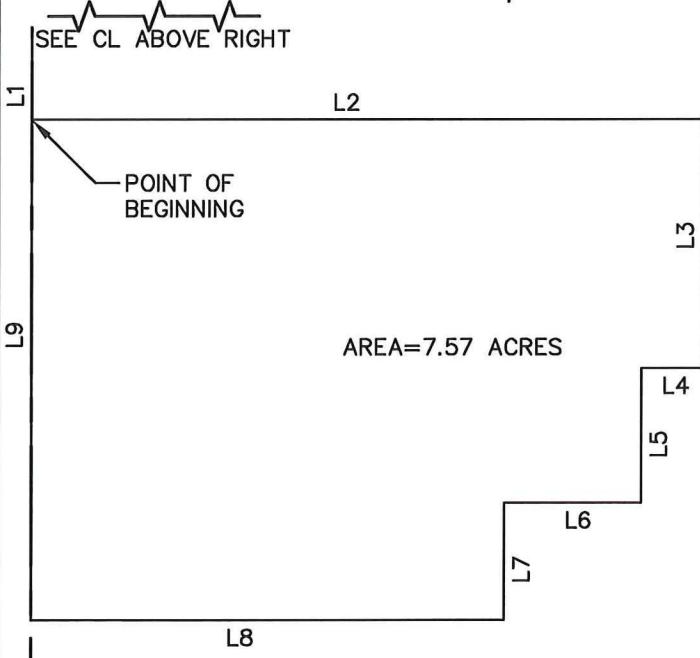
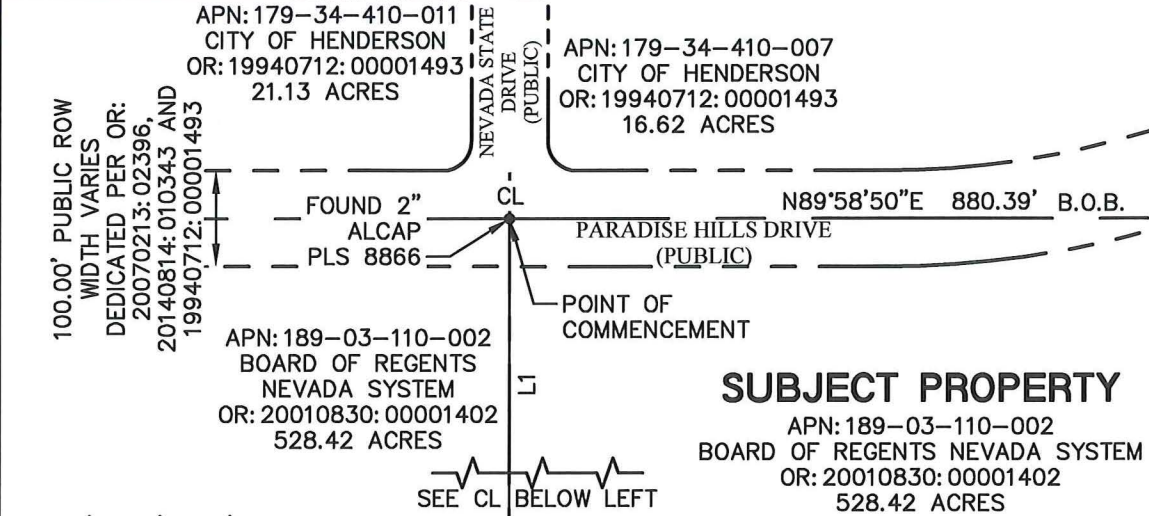
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100.00' PUBLIC ROW  
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BOARD OF REGENTS  
NEVADA SYSTEM  
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528.42 ACRES

**SUBJECT PROPERTY**

APN: 189-03-110-002  
BOARD OF REGENTS NEVADA SYSTEM  
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LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	412.58'	S00°00'10"W
L2	698.50'	N90°00'00"E
L3	258.83'	S00°00'00"E
L4	63.33'	N90°00'00"W
L5	140.17'	S00°00'00"E
L6	142.25'	N90°00'00"W
L7	121.75'	S00°00'00"E
L8	492.92'	N90°00'00"W
L9	520.75'	N00°00'00"E

<b>LEGEND</b>	FOUND MONUMENTATION	<b>FILE NAME:</b>	LEGAL EXHIBIT.dwg
CENTER LINE	-----	SECTION LINE	-----
ROW LINE	-----	PROPERTY LINE	-----
EASEMENT LINE	-----	ADJACENT PROPERTY LINE	-----

DRAWN BY: SAP SCALE: 1"=200'  
CHECKED BY: GMM DATE: 4-25-18

**NEVADA STATE COLLEGE**  
**CITY OF HENDERSON**

PROJECT No.:  
181002

**Lochsa engineering**  
6345 South Jones Blvd. Suite 100  
Las Vegas, NV 89118  
Phone (702) 365-9312 - Fax (702) 365-9317

CAMPUS HOUSING AT  
NEVADA STATE COLLEGE  
(PHASE I)

SHEET No.  
**B**  
SHEET 2 OF 2

Point of Beginning : North: 558814.33' East: 338138.25'

Segment #1 : Line

Course: S0°00'00.00"E Length: 258.83'

North: 558555.50' East: 338138.25'

Segment #2 : Line

Course: N90°00'00.00"W Length: 63.33'

North: 558555.50' East: 338074.92'

Segment #3 : Line

Course: S0°00'00.00"E Length: 140.17'

North: 558415.33' East: 338074.92'

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Course: N90°00'00.00"W Length: 142.25'

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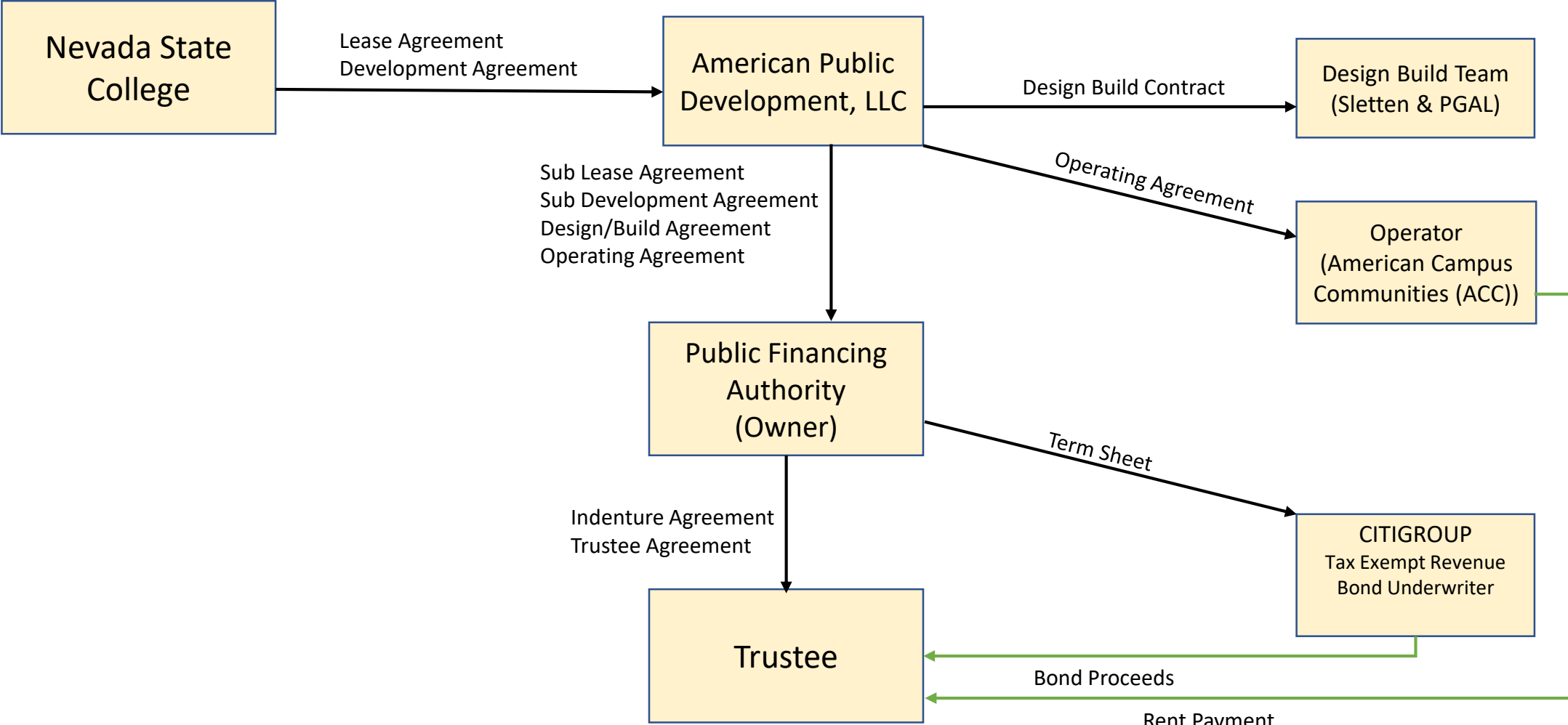
Segment #8 : Line

Course: N90°00'00.00"E Length: 698.50'

North: 558814.33' East: 338138.25'

-----  
Perimeter: 2438.50' Area: 329837.54 Sq. Ft.

# State Campus Village Project



\* Trustee will distribute monies in accordance with the Indenture and agreements.

# **GROUND SUBLEASE AGREEMENT FOR STATE CAMPUS VILLAGE**

*by and between*

**AMERICAN PUBLIC DEVELOPMENT, LLC  
("TENANT")**

*and*

**PUBLIC FINANCE AUTHORITY  
("AUTHORITY")**

**Dated as of \_\_\_\_\_, 2018**

**GROUND SUBLEASE AGREEMENT  
FOR  
STATE CAMPUS VILLAGE**

This **GROUND SUBLEASE AGREEMENT FOR STATE CAMPUS VILLAGE** (this "**Sublease**") dated for reference purposes only as of \_\_\_\_\_, 2018 (the "**Effective Date**"), is made by and between **AMERICAN PUBLIC DEVELOPMENT, LLC**, a Nevada limited liability company ("**Tenant**") and the **PUBLIC FINANCE AUTHORITY**, a unit of government and body corporate and politic of the State of Wisconsin ("**Authority**"). Tenant and Authority are individually sometimes referred to herein as a "**Party**" and collectively as the "**Parties**." All capitalized terms in this Sublease not otherwise defined shall have the meanings set forth in the Ground Lease (as defined below).

**RECITALS**

**A.** Nevada State College is a public college founded in 2002 and a part of the Nevada System of Higher Education ("**NSHE**"). NSHE exists in accordance with the laws of the State of Nevada.

**B.** In early 2010, the Board of Regents of the NSHE on behalf of the Nevada State College, a constitutional entity of the State of Nevada ("**Landlord**") completed its campus master plan for its 509-acre site ("**Site**"). Student housing is identified as a significant component of the master plan, eventually intended to provide housing for 5,200 students on more than 46 acres of the Site.

**C.** The real property described on **Exhibit A** (the "**Land**"), comprising approximately 7.5 acres, has been identified for the initial phase of student housing for the Site. The project is a development of seven buildings of student housing totaling approximately 312 beds, subject to further revision by Tenant, as shown on the attached **Exhibit B** (the "**Project**"; the Project, together with the Land, sometimes hereinafter referred to as the "**Premises**").

**D.** Landlord and Tenant contacted the Authority about the opportunity for the Authority to: (i) finance and own the Project; and (ii) hire one or more third-parties to manage the development of the Project as well as the ongoing operation of the Project on behalf of the Authority.

**E.** Tenant has previously entered into a Ground Lease Agreement for State Campus Village with Landlord dated as of \_\_\_\_\_, 2018 (the "**Ground Lease**"), a copy of which is attached as **Exhibit C** to this Sublease, whereby Landlord leased to Tenant the Land for the purposes of development, financing, construction, and management of the Project.

F. In connection with the Ground Lease, on or about \_\_\_\_\_, 2018, Landlord and Tenant entered into a Project Development Agreement (the “**Development Agreement**”) governing the development of the Project by Tenant.

G. Contemporaneously herewith, Tenant and the Authority have entered into a Sub-Development Agreement governing the development of the Project by Tenant.

H. Contemporaneously herewith, (i) Tenant and the Authority have entered into an Asset Management Agreement (the “**Asset Management Agreement**”) whereby, upon completion of the Project’s construction, Tenant will manage the Project in accordance with, among other things, the terms and conditions of the Asset Management Agreement and the Indenture (as defined below); and (ii) Tenant and American Campus Communities (“**ACC**”) have entered into a Facility Operating Agreement (the “**Operating Agreement**”) whereby, upon completion of the Project’s construction, ACC will conduct the day-to-day operation of the Project in accordance with, among other things, the terms and conditions of the Operating Agreement and the Indenture (as defined below).

I. Contemporaneously herewith, the Authority and [\_\_\_\_\_] (“**Trustee**”) have entered into an Indenture (the “**Indenture**”) pursuant to which the Authority will issue its [\$\_\_\_\_\_] governmental purpose revenue bonds (the “**Bonds**”) to finance, among other things, the development and construction of the Project.

J. This Sublease is intended to grant to the Authority a sub-leasehold interest in the Land consistent with the terms set forth herein, and the execution and delivery of this Sublease is a condition precedent to the Authority agreeing to enter into the aforementioned agreements, and the Authority is relying on this Sublease (and its enforceability) in executing the aforementioned agreements.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein set forth by each Party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each Party hereto, Tenant and the Authority hereby agree as follows with the intent to be legally bound:

1. **Premises**. Tenant, in consideration of the Sublease Payments (as defined herein), sublets the Premises to the Authority.

2. **Term and Possession**. The term of this Sublease will begin on the Effective Date of the Sublease and, unless earlier terminated as provided herein, will continue until that day which is the day prior to the last day of the term of the Ground Lease (subject to its earlier termination, as set forth therein, and including any extensions thereto). The Parties acknowledge and agree that the Authority is not a party to the Ground Lease and shall have no responsibility to Landlord thereunder except to the extent of Landlord’s remedies under the Ground Lease. However, subject to Section 12 herein, the Authority may assign (the “**Assignment**”) to an assignee (the “**Assignee**”)



its rights and obligations under this Sublease immediately upon written notice to Tenant in the event that the Authority disposes of, by sale or otherwise, the Improvements, as defined in the Ground Lease. Such Assignment shall terminate the Authority's rights and obligations under this Sublease, and thereafter Tenant shall look solely to such Assignee concerning the performance of any sublessee obligations, including the payment of the Sublease Payments (as defined herein). The portion of the term of this Sublease during which the Authority is a sublessee under this Sublease shall be referred to as the "**Authority Term**."

**3. Sublease Payments.** The Authority shall cause to be paid directly to Landlord sublease payments equal to the amount of Base Rent owed Landlord under Section 5.1 of the Ground Lease [and Utilities Expenses owed under Section 7.4 of the Ground Lease], payable on the dates and according to the terms of Sections 5.1 and 7.4 of the Ground Lease during the Authority Terms of this Sublease (the "**Sublease Payments**").

**4. Defaults.** The Authority shall be in default of this Sublease only if during the Authority Term the Authority causes Tenant to fail to materially fulfill any of Tenant's obligations under the Ground Lease, except for the payment of Rent, and such failure is attributable solely to the willful misconduct of the Authority (as opposed to being attributable to Tenant in its capacity as asset manager under the Asset Management Agreement). The Parties understand, acknowledge and agree that, in the event that there are no monies available under the Indenture for payment of the same, the Authority's failure to make any Sublease Payment is not a default under this Sublease and will not impact Tenant's obligation, if any, to pay Rent under the Ground Lease. Tenant hereby covenants and agrees to immediately provide the Authority with a copy of any and all notices delivered to Tenant by Landlord under the Ground Lease, and to notify the Authority immediately in the event that Landlord exercises, or purports to exercise, any of the Landlord's remedies for breach of the Ground Lease.

**5. Use Restrictions.** All of the terms and conditions of the Ground Lease relating to the use of the Premises, including without limitation those set forth in Articles 9 and 11 of the Ground Lease, are incorporated herein by reference. Without limiting the foregoing, the Parties understand and agree that Tenant is solely responsible for compliance with any and all use restrictions under the Ground Lease by virtue of the Asset Management Agreement and, by virtue of and pursuant to the Asset Management Agreement, shall hold the Authority harmless and indemnify the Authority for any actual or threatened violation of a use restriction set forth in the Ground Lease.

**6. Cumulative Rights.** The rights of the Parties under this Sublease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

**7. Property Insurance.** During the Authority Term, the Authority shall maintain insurance of the types and in the amounts specified in the Indenture.

**8. Notice.** Notices under this Sublease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows to every interested Party:

**TENANT:**

American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Tony Traub  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: [ttraub@garfieldtraub.com](mailto:ttraub@garfieldtraub.com)

With a copy to:

American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Cam Walker  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: [cam@camwalker.com](mailto:cam@camwalker.com)

And a copy to:

Ballard Rawson, Chartered  
10181 Park Run Drive, Suite 110  
Las Vegas, NV 89145  
Attn: Kris T. Ballard, Esq.  
Phone: (702) 425-3555  
Fax: (702) 722-5525  
Email: [ktb@ballardrawson.com](mailto:ktb@ballardrawson.com)

**AUTHORITY:**

Public Finance Authority  
22 East Mifflin Street, Suite 900  
Madison, WI 53703  
Attn: Scott Carper and Michael LaPierre  
Phone: (925) 478-4912 (Mr. Carper) and (925) 280-4381 (Mr. LaPierre)  
Fax: (608) 237-2368  
Email: [scarper@pfauthority.or](mailto:scarper@pfauthority.or) and [mlapierre@pfauthority.org](mailto:mlapierre@pfauthority.org)

Such addresses may be changed from time to time by any Party by providing notice to the other interested Parties as described above.

**9. Governing Law and Venue.** Any legal actions brought to enforce this Sublease shall be interpreted by the laws of the State of Nevada; provided, however, that the following enumerated matters shall be governed by the laws of the State of Wisconsin, excluding conflicts of law principles: (a) the Authority's organization, existence, statutory and corporate powers, and legal and contractual capacity; (b) the Authority's right to the payment of its fees, costs and expenses, including, but not limited to, attorneys' fees, costs of investigation and the expenses of other professionals retained by the Authority and the reasonableness of such fees, costs, and expenses; (c) the Authority's and the Authority Indemnified Persons' (as defined in the Indenture) rights to indemnification from Tenant (and Tenant's corresponding obligation to provide such indemnification); (d) Tenant's release of the Authority and the Authority Indemnified Persons (as defined in the Indenture) from liability; (e) exculpation of the Authority and the Authority Indemnified Persons (as defined in the Indenture) from pecuniary liability and any limitations thereon; and (f) the Authority's governmental rights, privileges and immunities, and any action concerning such issues must be brought in the State of Wisconsin.

**10. Landlord's Consent.** It shall be a condition precedent to this Sublease that Landlord deliver to Tenant and the Authority its consent to this Sublease.

**11. Asset Management Agreement.** The Authority's intended use of the Premises is set forth in the Asset Management Agreement. Tenant agrees that the Authority's execution and delivery of the Asset Management Agreement fulfills any and all of the Authority's obligations or duties to use the Premises in a manner consistent with the Ground Lease. The Authority covenants to not engage in willful misconduct that would cause Tenant's interest in the Ground Lease to be impaired.

**12. Authority Sublease and Assignment.** Except as permitted for Tenant without consent of Landlord under the Ground Lease, and as provided in the following sentence, the Authority shall not assign, sublease, license, or permit the use or occupancy of any space in the Premises without the written consent of Tenant and Landlord in accordance with the terms of the Ground Lease. No consent shall be necessary for the Authority to transfer or pledge rights or obligations arising under this Sublease from the Authority to the Trustee, including, without limitation, pursuant to the Subleasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing. For avoidance of doubt, the Authority shall be allowed to exercise all rights of assignment, sublease, license, use and occupancy granted Tenant under the Ground Lease.

**13. Ground Lease/Sublease Non Contravention.** This Sublease and all the rights of the Authority hereunder are expressly subject and subordinate to the Ground Lease. The Authority confirms that the Authority has read the Ground Lease and is familiar with the terms and provisions

thereof. All of the terms, provisions, covenants, agreements and conditions of the Ground Lease are incorporated herein by reference and made a part of this Sublease with the same force and effect as though set forth in full herein and the Authority covenants and agrees to observe and perform all of the covenants and obligations of Tenant under the Ground Lease; provided, however, the Authority shall have no personal obligation, nor incur any liability, beyond the Authority's then leasehold interest in the Premises and the income therefrom and proceeds thereof. In connection with the foregoing, for the purposes of this Sublease (and specifically with respect to Article 24 of the Ground Lease), (x) wherever in the Ground Lease the word "Landlord" is used, it shall be deemed to mean Tenant, and (y) wherever in the Ground Lease the word "Tenant" is used it shall be deemed to mean the "Authority" (the Authority hereby having the benefit of all of the covenants and undertakings of Landlord to the extent the same are applicable to the Premises and said substitution hereby conferring thereby all of the rights of Tenant, as tenant, under the Ground Lease to the Authority). To the extent there are inconsistencies between any provision of the Ground Lease and any provision of this Sublease, the Ground Lease shall govern, control and prevail. Notwithstanding the foregoing, nothing in this Sublease shall operate to absolve Tenant from its obligation to comply with the terms and provisions of the Asset Management Agreement in respect to, among other things, the occupancy and use of the Premises and to cause ACC to comply with the corresponding provisions of the Operating Agreement. Further, notwithstanding anything to the contrary contained in the Ground Lease, Tenant agrees that the Ground Lease shall not be amended or modified in any way without the prior written consent of both the Authority and the Trustee, which consent may be granted, conditioned or withheld in the Authority's or the Trustee's sole and absolute discretion.

**14. Indemnification.** Without limiting or otherwise modifying the obligations of Tenant under any other agreement, Tenant shall indemnify, defend and hold harmless the Authority and all Authority Indemnified Persons (as defined in the Indenture) from and against any and all Liabilities (as defined in the Indenture) from or otherwise relating to the Ground Lease and any other agreement related thereto. To the extent of their rights hereunder to indemnification and exculpation from pecuniary liability, each Authority Indemnified Person (as defined in the Indenture) is a third-party beneficiary of this Section 14 and is entitled to enforce such rights in his, her, its or their own name. This Section 14 shall not negate or otherwise limit the Authority and any Authority Indemnified Person's right to indemnification under any other agreement or document.

**15. Quiet Enjoyment.** The Authority, upon observing and keeping all covenants, agreements and conditions of this Sublease to be kept on its part, shall quietly have and enjoy the Premises during the Authority Term without hindrance or molestation by anyone claiming by, through or under Tenant; subject, however, to the exceptions, reservations and conditions of this Sublease and the Ground Lease.

**16. Tenant Assignment.** Notwithstanding anything to the contrary contained herein or in the Ground Lease, Tenant covenants that it shall not assign, mortgage, or encumber any interest that it may have in the Premises under the Ground Lease, nor sublease, nor license, nor

permit the Premises or any part of the Premises to be used or occupied by others, without the prior written consent of the Authority in each instance, which consent may be withheld in the Authority's sole and absolute discretion. Any assignment or sublease in violation of this Section 16 will be void.

**17. Ownership.** During the term of this Sublease, as between Tenant, on one hand, and the Authority on the other, the Authority shall be deemed and treated as the owner of the Improvements; provided, however, that in no event shall the Authority transfer or encumber the Improvements separately from the Authority's subleasehold estate. The Authority shall have the right to depreciate the same for federal and state income-tax purposes. Any fixtures and equipment (as the case may be) that are removed by the Authority, at the Authority's sole discretion, shall be replaced with fixtures and equipment, as applicable, of the same or better quality, function and utility as are required in order for the permitted use of the Premises. During the term of this Sublease, for purposes of this Sublease, all fixtures and equipment shall be deemed to be owned by the Authority and the Authority shall be solely responsible to repair and maintain such fixtures and equipment in good condition and repair, in compliance with the authorizations of Governmental Authorities.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, the Parties have executed this **GROUND SUBLEASE AGREEMENT** as of the date first written above.

**TENANT:**

**AMERICAN PUBLIC DEVELOPMENT, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AUTHORITY:**

**PUBLIC FINANCE AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Assistant Secretary

**EXHIBIT A**

—

**LEGAL DESCRIPTION OF LAND**

APN 189-03-110-002

EXHIBIT "A"  
LEGAL DESCRIPTION  
NEVADA STATE COLLEGE CITY OF HENDERSON  
CAMPUS HOUSING AT NEVADA STATE COLLEGE  
PHASE 1

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 412.58 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 698.50 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 63.33 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 140.17 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 142.25 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 121.75 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 492.92 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 520.75 FEET TO THE POINT OF BEGINNING.

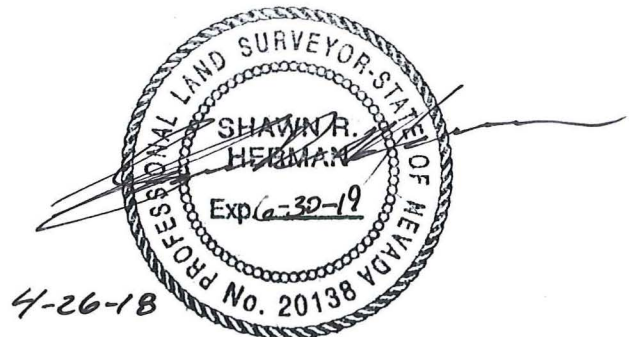
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SAID LINE BEARS: SOUTH 89°23'54" WEST.

SEE EXHIBIT "B" TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:  
SHAWN R. HERMAN, PLS  
NEVADA CERTIFICATE NUMBER 20138  
EXPIRES JUNE 30, 2019  
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6345 SOUTH JONES BOULEVARD  
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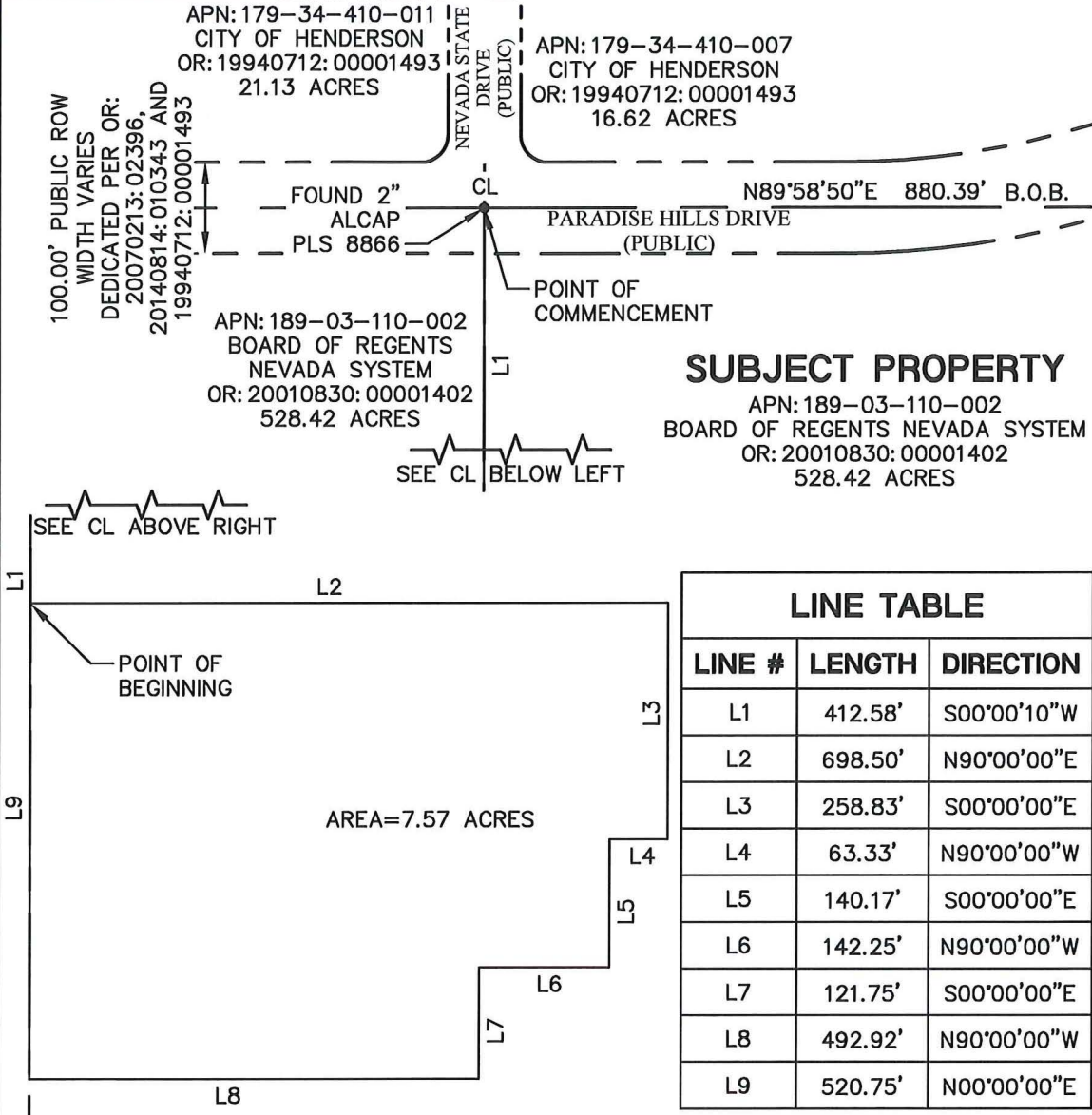
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100.00' PUBLIC ROW  
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CENTER LINE	---	SECTION LINE	---
ROW LINE	---	PROPERTY LINE	---
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DRAWN BY: SAP SCALE: 1"=200'  
CHECKED BY: GMM DATE: 4-25-18

**NEVADA STATE  
COLLEGE  
CITY OF HENDERSON**

PROJECT No.:  
181002

**Lochsa**  
engineering  
6345 South Jones Blvd. Suite 100  
Las Vegas, NV 89118  
Phone (702) 365-9312 - Fax (702) 365-9317

CAMPUS HOUSING AT  
NEVADA STATE COLLEGE  
(PHASE I)

SHEET No.  
**B**  
SHEET 2 OF 2

Point of Beginning : North: 558814.33' East: 338138.25'

Segment #1 : Line

Course: S0°00'00.00"E Length: 258.83'

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North: 558814.33' East: 337439.75'

Segment #8 : Line

Course: N90°00'00.00"E Length: 698.50'

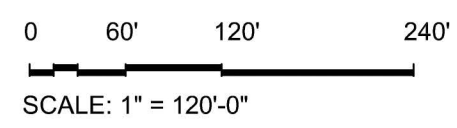
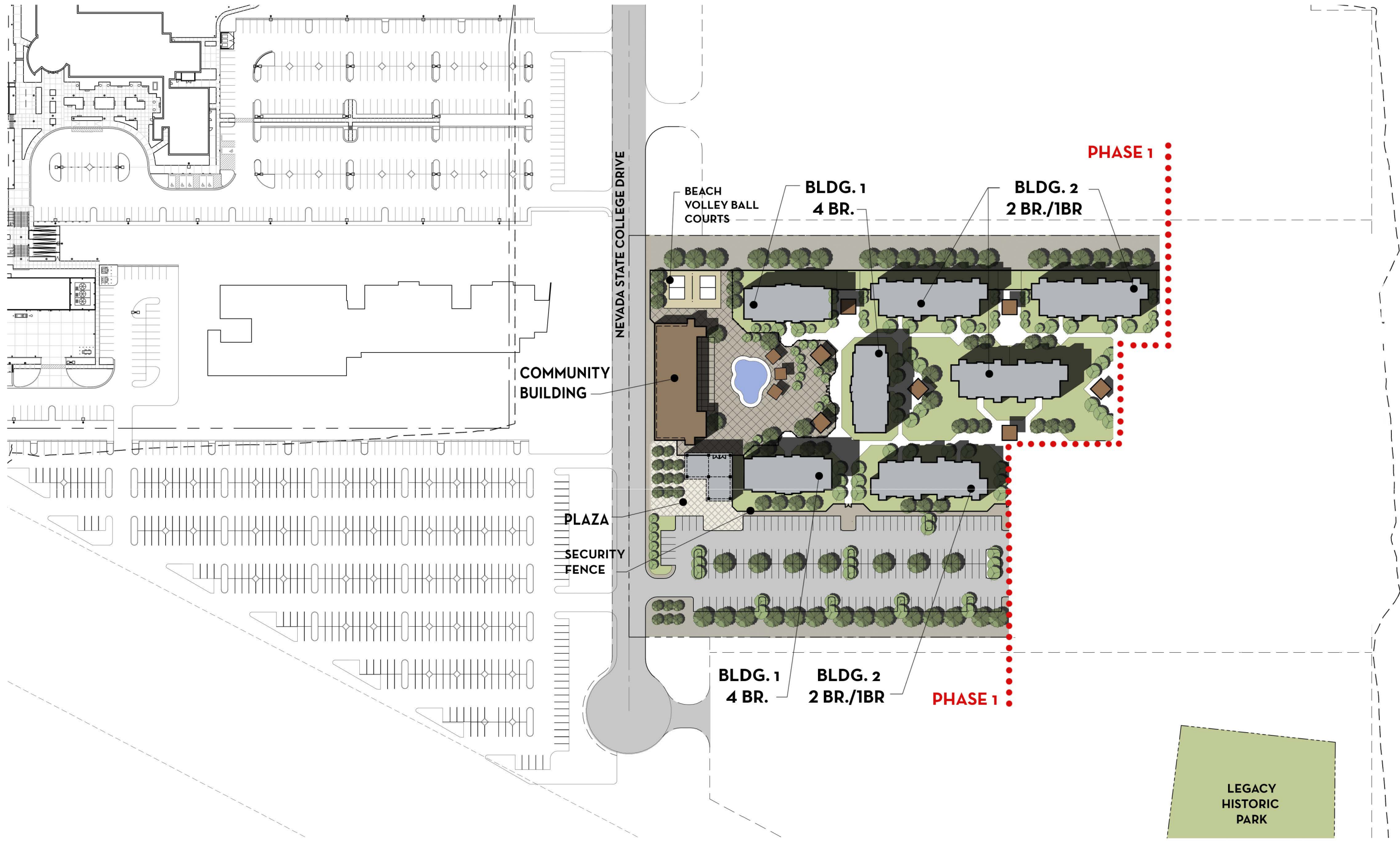
North: 558814.33' East: 338138.25'

-----  
Perimeter: 2438.50' Area: 329837.54 Sq. Ft.

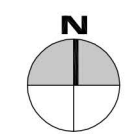
**EXHIBIT B**

—

**GRAPHIC DEPICTION OF LAND**



# Enlarged Site Plan P1



**EXHIBIT C**  
—  
**GROUND LEASE**

## PROJECT SUB-DEVELOPMENT AGREEMENT

This Project Sub-Development Agreement (this “**Sub-Development Agreement**”) is made by and between American Public Development, LLC, a Nevada limited liability company (“**Developer**”) and the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin (“**Authority**”). Developer and the Authority are each referred to as a “**Party**” and shall collectively be referred to as the “**Parties**” herein. All capitalized terms in this Sub-Development Agreement not otherwise defined shall have the meanings set forth in the Development Agreement (as defined below).

This Sub-Development Agreement shall become effective when executed by the Parties and approved by the Board of Regents of the Nevada System of Higher Education (“**Board of Regents**”) at a publicly-noticed meeting (the “**Effective Date**”).

As used herein, the term “**Developer**” is used in the singular to refer to American Public Development, LLC, or its assignee who assumes the obligations of the ground lessee from the Board of Regents on behalf of Nevada State College (“**NSC**”) for the Land to construct the State Campus Village Project (the “**Project**”).

### RECITALS

**A.** NSC is a public college founded in 2002 and a part of the Nevada System of Higher Education (“**NSHE**”). NSHE exists in accordance with the laws of the State of Nevada.

**B.** In early 2010, NSC completed its campus master plan for its 509-acre site (“**Site**”). Student housing is identified as a significant component of the master plan, and is eventually intended to provide housing for 5,200 students on more than 46 acres of the Site.

**C.** The real property described on **Exhibit A** (the “**Land**”), comprising approximately 7.5 acres, has been identified for the initial phase of student housing for the Site. The project is a development of seven buildings of student housing totaling approximately 312 beds, subject to further revision by Developer, as shown on **Exhibit B** (“**Project**”); the Project, together with the Land, sometimes hereinafter referred to as the “**Premises**”).

**D.** NSC and Developer contacted the Authority about the opportunity for the Authority to: (i) finance and own the Project; and (ii) hire one or more third-parties to manage the development of the Project as well as the ongoing operation of the Project on behalf of the Authority.

**E.** On or about \_\_\_\_\_, 2018 Developer and NSC entered into a Ground Lease Agreement for State Campus Village (the “**Ground Lease**”), whereby NSC leased to Developer the Land for the purposes of development, financing, construction, and management of the Project.

**F.** In connection with the Ground Lease, on or about \_\_\_\_\_, 2018, NSC and Developer have entered into a Project Development Agreement (the “**Development Agreement**”) governing the development of the Project by Developer.

**G.** The Authority desires to: (i) finance and own the Project; and (ii) hire one or more third-parties to manage the development of the Project as well as the ongoing operation of the Project on behalf of the Authority.

**H.** Contemporaneously herewith, Developer and the Authority entered into a Ground Sublease Agreement for State Campus Village (the “**Ground Sublease**”), whereby Developer agreed to sublet the Land to the Authority to permit the Authority to develop the Project.

**I.** On or about \_\_\_\_\_, 2018, Developer and [\_\_\_\_\_] entered into a [Design/Build Agreement] (the “**Design/Build Agreement**”) governing the construction of the Project by Developer.

**J.** Contemporaneously herewith, (i) Developer and the Authority have entered into an Asset Management Agreement (the “**Asset Management Agreement**”) whereby, upon completion of the Project’s construction, Developer will manage the Project in accordance with, among other things, the terms and conditions of the Asset Management Agreement and the Indenture (as defined below); and (ii) Developer and American Campus Communities (“**ACC**”) have entered into a Facility Operating Agreement (the “**Operating Agreement**”) whereby, upon completion of the Project’s construction, ACC will conduct the day-to-day operation of the Project in accordance with, among other things, the terms and conditions of the Operating Agreement and the Indenture (as defined below).

**K.** Contemporaneously herewith, the Authority and [\_\_\_\_\_] (“**Trustee**”) have entered into an Indenture (the “**Indenture**”) pursuant to which the Authority will issue its [\$\_\_\_\_\_] governmental purpose revenue bonds (the “**Bonds**”) to finance, among other things, the development and construction of the Project.

**L.** This Sub-Development Agreement memorializes Developer’s respective obligations to the Authority with regard to the construction and development of the Project, the execution and delivery of this Sub-Development Agreement by Developer to the Authority is a condition precedent to the Authority agreeing to enter into the aforementioned agreements, and the Authority is relying on this Sub-Development Agreement (and its enforceability) in executing the aforementioned agreements.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreement herein set forth by each Party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each Party hereto, Developer and the Authority hereby agree as follows with the intent to be legally bound:

**1. Recitals.** The RECITALS set forth above and all exhibits attached hereto are true, accurate and incorporated herein by reference.

**2. Developer Obligations.** Developer agrees to satisfy each and every obligation and to comply with each and every provision of the Ground Lease, the Development Agreement, the Ground Sublease, this Sub-Development Agreement, the Design/Build Agreement, the Asset Management Agreement, the Operating Agreement, and all other agreements in any way related to the Project of which Developer is a party (collectively, the “**Developer Agreements**”). Further,



all requisitions for payment of sums due under the Design/Build Agreement shall be made in compliance with the process set forth in the Indenture.

**3. Authority Obligations.** In consideration for Developer's agreement to fully and faithfully comply with the terms of the Developer Agreements, the Authority will pay Developer, subject to Paragraph \_\_\_\_\_ below, the total sum of [\$\_\_\_\_\_] for the development services provided hereunder according to the following schedule: (a) the sum of [\$\_\_\_\_\_] upon the closing of the issuance of the Bonds, which sum shall immediately be deposited in that certain [Fund] established under Section [\_\_\_\_\_] of the Indenture; and (b) the sum of [\$\_\_\_\_\_] no later than [\_\_\_\_\_]. All payments under this Paragraph 3 shall be made according to, and pursuant to the process set forth in, Section [\_\_\_\_\_] of the Indenture.

**4. Limitation on Authority's Liability.** Notwithstanding anything contained in this Sub-Development Agreement or any of the other agreements or documents referred to herein or otherwise, the Authority shall not be liable for the payments under Paragraph 3 above or payment of any liabilities of any conceivable kind under any conceivable theory due under any of the Developer Agreements or under any other agreement or document referenced herein, or any liabilities under or by reason of, or in connection with, this Sub-Development Agreement, any of the other agreements or documents referred to herein, relating to the Project, or otherwise, except solely and exclusively from and only to the extent of Available Moneys.

For purposes of this Sub-Development Agreement, "**Available Moneys**" means funds that are being held by the Trustee in the Project Account (as defined in the Indenture) designated under the Indenture for the express purpose of paying such amounts and not otherwise applied or applicable to any other purpose thereunder.

IT IS UNDERSTOOD AND AGREED THAT THE AUTHORITY MAKES NO REPRESENTATION WHATSOEVER AS TO THE EXISTENCE OF AVAILABLE MONEYS, OR THE AMOUNT THEREOF, OR THE SUFFICIENCY THEREOF FOR THE PURPOSE FOR WHICH SUCH AVAILABLE MONEYS ARE TO BE USED UNDER THIS SUB-DEVELOPMENT AGREEMENT AND IS UNDER NO OBLIGATION TO ENSURE THAT THERE IS SUFFICIENT AMOUNTS HELD UNDER THE INDENTURE FOR THE PURPOSE OF SUCH AVAILABLE MONEYS.

**5. Default.** Any one or more of the following shall constitute a default under this Sub-Development Agreement:

- a. Developer fails to timely and fully perform, or comply with, any one or more of Developer's obligations under (or any of the terms or conditions of) this Sub-Development Agreement or any of the Developer Agreements;
- b. NSC fails to timely and fully perform, or comply with, any one or more of NSC's obligations under (or any of the terms or conditions of) any of the Developer Agreements to which it is a party;

- c. ACC fails to timely and fully perform, or comply with, any one or more of ACC's obligations under (or any of the terms or conditions of) any of the Developer Agreements to which it is a party;
- d. Any representation or warranty made by Developer in this Sub-Development Agreement or any of the Developer Agreements shall prove to have been false in any material respect as of the time when made or given;
- e. Any representation or warranty made by NSC in any of the Developer Agreements to which it is a party shall prove to have been false in any material respect as of the time when made or given;
- f. Any representation or warranty made by ACC in any of the Developer Agreements to which it is a party shall prove to have been false in any material respect as of the time when made or given;
- g. Any default or event of default occurs, and if applicable is not cured within the time allowed by the applicable agreement, under any of the Developer Agreements; or
- h. NSC, ACC or Developer (or any successor to NSC, ACC or Developer) shall:
  - i. become insolvent or generally not pay, or be unable to pay, or admit in writing its inability to pay, its debts as they mature (except, with respect to NSC's or ACC's or Developer's failure to pay debts when they mature, for debts contested by NSC or ACC or Developer in good faith and in the appropriate proceedings, provided the Authority has consented to such contest),
  - ii. make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its assets,
  - iii. become the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or file a petition in bankruptcy, for reorganization or to effect a plan, or other arrangement with creditors,
  - iv. have a petition or application filed against it in bankruptcy or any similar proceeding, or have such a proceeding commenced against it, and such petition, application or proceeding shall remain undismissed for a period of sixty (60) days or more, or NSC or ACC or Developer shall file an answer to such a petition or application, admitting the material allegations thereof,

- v. apply to a court for the appointment of a receiver or custodian for any of its assets or properties, or have a receiver or custodian appointed for any of its assets or properties, with or without consent, and such receiver shall not be discharged within ninety (90) days after his appointment, or
- vi. adopt a plan of complete liquidation of its assets.

Developer agrees to notify the Authority and Trustee immediately upon the occurrence of any default or event of default under any of the Developer Agreements. Upon the Authority's or Trustee's receipt of notice of a default under any of the Developer Agreements, the Authority or Trustee has the right to cure, in their sole and absolute discretion, provided, however, the right to cure is in addition to, and not in substitution of, any rights or remedies it may have at law or equity.

6. **Assignment.** Developer acknowledges that the Authority and Trustee (for the benefit of the Bondholders, as defined in the Indenture) have a significant economic interest in the design and construction of the improvements within budget and on schedule, and in conformance with the plans and specifications. As a material inducement for the Authority and the Trustee to finance the project, and notwithstanding any other term of any agreement to which they are a party, Developer hereby grants to the Authority and the Trustee the irrevocable authority to unilaterally effect an assignment, in their sole and absolute discretion, by giving written notice to NSC and the Developer (in accordance with Section 10 herein) to effect an assignment of any and all of Developer's interests in the Development Agreement and/or by giving written notice to [ ] and the Developer (in accordance with Section 10 herein) to effect an assignment of any and all of Developer's interests in the Design/Build Agreement, each substantially in the form attached hereto as **Exhibit C** (the "**Notice of Assignment**"). The assignment shall be effective as provided in Section 10 herein. Nothing herein shall be construed as requiring the Authority or the Trustee to exercise the assignment.

Nothing herein shall be construed as negating or otherwise limiting any and all legal and equitable remedies available to the Authority as a result of a default, breach or threatened breach of this Sub-Development Agreement.

7. **Time is of the Essence.** Time is of the essence with reference to Developer's obligations under the Developer Agreements. Developer acknowledges that the timely performance of its obligations under the Developer Agreements is critical to the Authority and the Bonds, and that the Authority is relying on such timely performance of Developer's obligations under this Sub-Development Agreement and the other Developer Agreements, respectively.

8. **Indemnification.**

- a. Without limiting or otherwise modifying the obligations of Developer under any of the Developer Agreements, Developer shall indemnify, defend and

hold harmless the Authority and all Authority Indemnified Persons (as defined in the Indenture) and the Trustee and the Trustee Indemnified Persons (defined below) (collectively the “**Indemnitees**”) from and against any and all Liabilities (as defined in the Indenture) arising from or otherwise relating to this Sub-Development Agreement and the other Developer Agreements (collectively, the “**Covered Liabilities**”). To the extent of their rights hereunder to indemnification and exculpation from pecuniary liability, each Authority Indemnified Person and Trustee Indemnified Person is a third-party beneficiary of this Section 8 and is entitled to enforce such rights in his, her, its or their own name. This Section 8 shall not negate or otherwise limit the Authority, any Authority Indemnified Person, the Trustee and any Trustee Indemnified Person’s right to indemnification under any other agreement or document. Neither the existence of the [Excess Revenue Fund] (as defined in the Indenture) or insurance shall diminish Developer’s liability under this Section 8.

- b. **DEVELOPER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE INDEMNITEES SHALL BE INDEMNIFIED HEREUNDER AGAINST COVERED LIABILITIES ARISING FROM ANY INDEMNITEE’S OWN NEGLIGENCE OF ANY KIND, DESCRIPTION OR DEGREE (EXPRESSLY WAIVING APPLICATION OF THE COMPARATIVE NEGLIGENCE PROVISIONS OF SECTION 895.045 OF THE WISCONSIN STATUTES OR SIMILAR LAWS OF ANY JURISDICTION THAT MAY BE RELEVANT HERETO, OR BREACH OF CONTRACTUAL DUTY, WITHOUT REGARD TO OR THE NECESSITY FOR ANY BREACH OR FAULT ON THE PART OF DEVELOPER OR ANY OF ITS AFFILIATES, EXCEPT INsofar AS AND TO THE EXTENT THAT ANY SUCH LIABILITIES ARISE FROM THE WILLFUL MISCONDUCT OF THE PERSON SEEKING INDEMNIFICATION WHERE THE CLAIMS ARE DETERMINED IN A FINAL, NONAPPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED SOLELY FROM SUCH INDEMNITEE’S OWN WILLFUL MISCONDUCT.**
- c. “**Trustee Indemnified Person(s)**” means, collectively, the Trustee and its respective past, present and future directors, board members, officers, employees, authorized signatories, attorneys, contractors, subcontractors, agents and each of their respective heirs, successors and assigns.
- d. If any Liabilities (as defined in the Indenture), litigation, investigation or proceeding shall be brought against any Indemnitee relating to a Covered Liability, such Indemnitee shall promptly notify Developer thereof, and Developer shall be entitled, in its sole discretion, to assume and direct the defense thereof and appoint counsel of its own choosing in connection therewith. The same shall be a condition to the ability of such Indemnitee to receive any related indemnification contemplated herein unless but only to the extent the failure to provide such notice shall not result in material prejudice to Developer. Notwithstanding Developer’s assumption and

direction of such defense or election to appoint counsel to represent an Indemnitee in any action, such Indemnitee shall have the right to employ separate counsel (including local counsel, but only one such counsel in any jurisdiction in connection with any action), and Developer shall bear the reasonable fees, costs and expenses of such separate counsel if, and only if: (i) the use of counsel chosen by Developer to represent the Indemnitee would, in the reasonable opinion of the applicable Indemnitee(s) present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the Indemnitee and Developer or their affiliates and the Indemnitee shall have reasonably concluded that there may be legal defenses available to it or other Indemnitees which are different from or additional to those available to Developer, (iii) Developer shall not have employed counsel to represent the Indemnitee within a reasonable time after notice of the institution of such action shall have been received by Developer, or (iv) Developer shall, in its sole discretion, authorize the Indemnitee in writing to employ separate counsel at its reasonable expense.

9. **Termination**. This Sub-Development Agreement shall not terminate until the earlier of:

- a. The Bonds and all indebtedness, costs and fees related thereto (including, without limitation, attorneys' fees) are paid in full; or
- b. The Authority terminates this Sub-Development Agreement in writing.

10. **Notices**. Any notice given under this Sub-Development Agreement shall be deemed effective when personally delivered in writing, or the third business day after notice is deposited with the United States Postal Service, postage prepaid, certified with return receipt requested, or a commercially recognized overnight delivery service providing confirmation of delivery and addressed as follows:

**DEVELOPER:**

American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Tony Traub  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: [ttraub@garfieldtraub.com](mailto:ttraub@garfieldtraub.com)

With a copy to:

American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120

Henderson, NV 89074  
Attention: Cam Walker  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: [cam@camwalker.com](mailto:cam@camwalker.com)

And a copy to:

Ballard Rawson, Chartered  
10181 Park Run Drive, Suite 110  
Las Vegas, NV 89145  
Attn: Kris T. Ballard, Esq.  
Phone: (702) 425-3555  
Fax: (702) 722-5525  
Email: [ktb@ballardrawson.com](mailto:ktb@ballardrawson.com)

**AUTHORITY:**

Public Finance Authority  
22 East Mifflin Street, Suite 900  
Madison, WI 53703  
Attn: Scott Carper and Michael LaPierre  
Phone: (925) 478-4912 (Mr. Carper) and (925) 280-4381 (Mr. LaPierre)  
Fax: (608) 237-2368  
Email: [scarper@pfauthority.or](mailto:scarper@pfauthority.or) and [mlapierre@pfauthority.org](mailto:mlapierre@pfauthority.org)

**NSC:**

Board of Regents of the Nevada System of Higher Education  
c/o: Senior Vice President for Business and Finance  
University of Nevada, Las Vegas  
4505 S. Maryland Parkway  
Box 451004  
Las Vegas, NV 89154-1004  
Attn: \_\_\_\_\_  
Phone: (707) 895-3571  
Fax: (702) 895-1090  
Email: \_\_\_\_\_

And a copy to:

General Counsel  
Nevada State College  
\_\_\_\_\_

\_\_\_\_\_  
Henderson, NV \_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**\_\_\_\_\_**:

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Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**TRUSTEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

11. **Public Records Law.** Notwithstanding anything herein to the contrary, Developer acknowledges that the Authority is an “authority” for purposes of the Wisconsin Public Records Law (“**WPRL**”) and that this Sub-Development Agreement and all confidential information received from Developer that is covered by or related to this Sub-Development Agreement will be considered public records and will be subject to disclosure under the WPRL, except for information falling within one of the exemptions therefrom. The Authority is required to and shall comply with all applicable laws including, without limitation, the WPRL in relation to any records, documents and information related to the Authority’s dealings and relationship with Developer. Nothing in this Sub-Development Agreement shall be deemed or construed as a limitation on the Authority’s discretion relating to compliance with the WPRL or any other applicable law. Nevertheless, the Authority will use reasonable efforts to provide notice to Developer of any request under the WPRL, but the Authority shall have no liability arising out of the Authority’s failure to do so in a timely manner or at all.

12. **Governing Law.** Any legal actions brought to enforce this Sub-Development Agreement shall be interpreted by the laws of the State of Nevada; provided, however, that the following enumerated matters shall be governed by the laws of the State of Wisconsin, excluding

conflicts of law principles: (a) the Authority's organization, existence, statutory and corporate powers, and legal and contractual capacity; (b) the Authority's right to the payment of its fees, costs and expenses, including, but not limited to, attorneys' fees, costs of investigation and the expenses of other professionals retained by the Authority and the reasonableness of such fees, costs, and expenses; (c) the Authority's and the Authority Indemnified Persons' (as defined in the Indenture) rights to indemnification from Developer (and Developer's corresponding obligation to provide such indemnification); (d) Developer's release of the Authority and the Authority Indemnified Persons (as defined in the Indenture) from liability; (e) exculpation of the Authority and the Authority Indemnified Persons (as defined in the Indenture) from pecuniary liability and any limitations thereon; and (f) the Authority's governmental rights, privileges and immunities, and any action concerning such issues must be brought in the State of Wisconsin.

13. **General Provisions.** This Sub-Development Agreement contains the entire agreement between the Parties relating to the subject matter contemplated under this Sub-Development Agreement and all prior or contemporaneous agreements concerning such subject matter, oral or written, are superseded by this Sub-Development Agreement. This Sub-Development Agreement shall not be amended unless agreed to by all of the Parties hereto in writing. The invalidity or unenforceability of a particular provision of this Sub-Development Agreement shall not affect the other provisions, and this Sub-Development Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. Except as otherwise provided in Section 8 above and Section 17 below, this Agreement is solely for the benefit of the Authority and Developer, and nothing contained in this Sub-Development Agreement shall confer upon anyone other than the Authority and Developer any right to insist upon or enforce the performance or observance of any of the obligations contained in this Sub-Development Agreement. The Authority is not a partner, agent or joint venturer of or with Developer.

14. **Counterparts and Electronic Signatures.** This Sub-Development Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. This Sub-Development Agreement may be executed by facsimile or scanned signatures and any signed Sub-Development Agreement or signature page to this Sub-Development Agreement that is transmitted by facsimile or in the portable document format (.pdf) shall be treated in all manners and respects as an original Sub-Development Agreement or signature page.

15. **Successors and Assigns.** This Sub-Development Agreement is binding upon and will inure to the benefit of the Parties hereto, and their respective successors and assigns; however, this Sub-Development Agreement shall not be assigned by Developer without the prior written consent of the Authority (which such consent may be withheld by the Authority for any reason).

16. **Captions.** The captions used in this Sub-Development Agreement are solely for convenience, and shall not be deemed to constitute a part of the substance of the Sub-Development Agreement for purpose of its construction.

17. **Third Party Beneficiary.** The Trustee is a third party beneficiary of this Sub-Development Agreement and has all of the benefits and rights of the Authority hereunder.



18. **Letter of Reliance.** Within forty-five (45) days of the date of this Sub-Development Agreement, Developer shall cause its consultants to deliver a letter addressed to the Authority and the Trustee stating that they may rely upon any reports previously, contemporaneously or thereafter delivered to Developer in connection with the Project, as if the Authority and the Trustee were addressees of the report, and shall promptly provide them with copies of such reports.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, the Parties have executed this **PROJECT SUB-DEVELOPMENT AGREEMENT** as of the date first written above.

**DEVELOPER:**

**AMERICAN PUBLIC DEVELOPMENT, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AUTHORITY:**

**PUBLIC FINANCE AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Assistant Secretary

**EXHIBIT A**

—

**LEGAL DESCRIPTION OF LAND**

APN 189-03-110-002

EXHIBIT "A"  
LEGAL DESCRIPTION  
NEVADA STATE COLLEGE CITY OF HENDERSON  
CAMPUS HOUSING AT NEVADA STATE COLLEGE  
PHASE 1

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 412.58 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 90°00'00" EAST, A DISTANCE OF 698.50 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 258.83 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 63.33 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 140.17 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 142.25 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 121.75 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 492.92 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 520.75 FEET TO THE POINT OF BEGINNING.

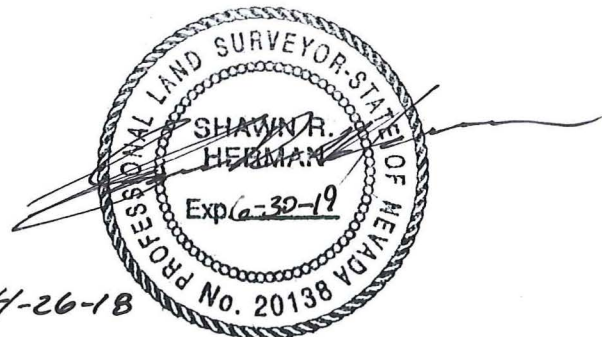
CONTAINING 7.57 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

SEE EXHIBIT "B" TO ACCOMPANY LEGAL DESCRIPTION, ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY:  
SHAWN R. HERMAN, PLS  
NEVADA CERTIFICATE NUMBER 20138  
EXPIRES JUNE 30, 2019  
LOCHSA SURVEYING  
6345 SOUTH JONES BOULEVARD  
LAS VEGAS, NEVADA 89118  
TEL (702) 365-9312  
FAX (702) 365-9317



j:\survey\legal descriptions\181002 nevada state college coh campus housing phase 1 rev 3.docx

APN: 189-03-110-002

**EXHIBIT 'B'**

APN: 179-34-410-011  
CITY OF HENDERSON  
OR: 19940712: 00001493  
21.13 ACRES

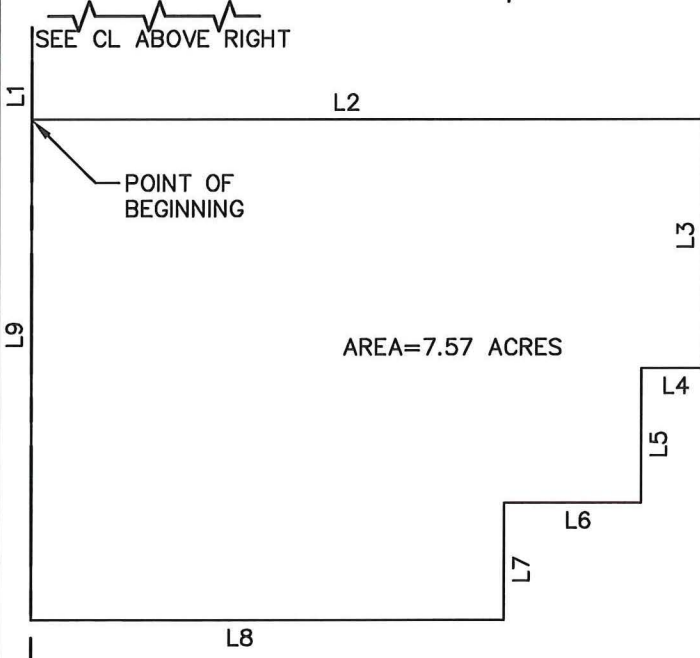
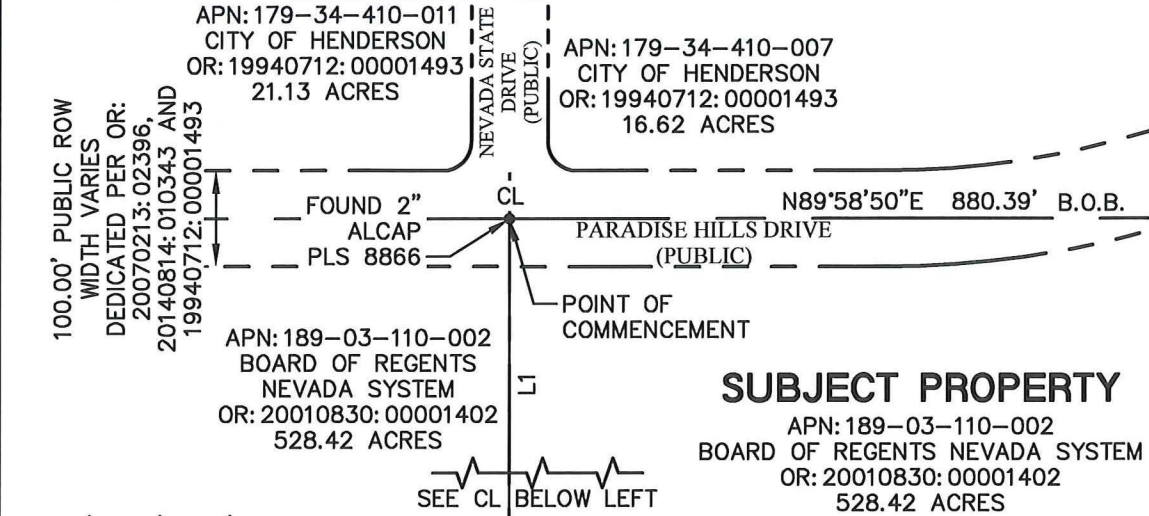
APN: 179-34-410-007  
CITY OF HENDERSON  
OR: 19940712: 00001493  
16.62 ACRES

100.00' PUBLIC ROW  
WIDTH VARIES  
DEDICATED PER OR:  
20070213:02396,  
20140814:010343 AND  
19940712:00001493

APN: 189-03-110-002  
BOARD OF REGENTS  
NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES

**SUBJECT PROPERTY**

APN: 189-03-110-002  
BOARD OF REGENTS NEVADA SYSTEM  
OR: 20010830: 00001402  
528.42 ACRES



LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	412.58'	S00°00'10"W
L2	698.50'	N90°00'00"E
L3	258.83'	S00°00'00"E
L4	63.33'	N90°00'00"W
L5	140.17'	S00°00'00"E
L6	142.25'	N90°00'00"W
L7	121.75'	S00°00'00"E
L8	492.92'	N90°00'00"W
L9	520.75'	N00°00'00"E

<b>LEGEND</b>	FOUND MONUMENTATION	<b>FILE NAME:</b>	LEGAL EXHIBIT.dwg
CENTER LINE	-----	SECTION LINE	-----
ROW LINE	-----	PROPERTY LINE	-----
EASEMENT LINE	-----	ADJACENT PROPERTY LINE	-----

DRAWN BY: SAP SCALE: 1"=200'  
CHECKED BY: GMM DATE: 4-25-18

**NEVADA STATE  
COLLEGE  
CITY OF HENDERSON**

PROJECT No.:  
181002

**Lochsa**  
engineering  
6345 South Jones Blvd. Suite 100  
Las Vegas, NV 89118  
Phone (702) 365-9312 - Fax (702) 365-9317

CAMPUS HOUSING AT  
NEVADA STATE COLLEGE  
(PHASE I)

SHEET No.  
**B**  
SHEET 2 OF 2

Point of Beginning : North: 558814.33' East: 338138.25'

Segment #1 : Line

Course: S0°00'00.00"E Length: 258.83'

North: 558555.50' East: 338138.25'

Segment #2 : Line

Course: N90°00'00.00"W Length: 63.33'

North: 558555.50' East: 338074.92'

Segment #3 : Line

Course: S0°00'00.00"E Length: 140.17'

North: 558415.33' East: 338074.92'

Segment #4 : Line

Course: N90°00'00.00"W Length: 142.25'

North: 558415.33' East: 337932.67'

Segment #5 : Line

Course: S0°00'00.00"E Length: 121.75'

North: 558293.58' East: 337932.67'

Segment #6 : Line

Course: N90°00'00.00"W Length: 492.92'

North: 558293.58' East: 337439.75'

Segment #7 : Line

Course: N0°00'00.00"E Length: 520.75'

North: 558814.33' East: 337439.75'

Segment #8 : Line

Course: N90°00'00.00"E Length: 698.50'

North: 558814.33' East: 338138.25'

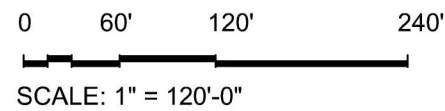
-----  
Perimeter: 2438.50' Area: 329837.54 Sq. Ft.

**EXHIBIT B**

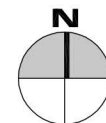
—

**GRAPHIC DEPICTION OF LAND**





# Enlarged Site Plan P1



**EXHIBIT C**

—

**FORM OF NOTICE OF ASSIGNMENT**

**ASSET MANAGEMENT AGREEMENT**

**BETWEEN**

**PUBLIC FINANCE AUTHORITY**

**AND**

**AMERICAN PUBLIC DEVELOPMENT, LLC**

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THIS ASSET MANAGEMENT AGREEMENT (this “Agreement”) is made and entered into as of this [\_\_\_] day of June, 2018, by and between the PUBLIC FINANCE AUTHORITY, a unit of government and a body corporate and politic organized and existing under the laws of the State of Wisconsin (the “Authority”), and AMERICAN PUBLIC DEVELOPMENT, LLC, a Nevada limited liability company (the “Company”).

## RECITALS

A. Company is knowledgeable and experienced in managing assets, including student housing facilities.

B. Company and The Board of Regents of Nevada System of Higher Education (the “Board”), on behalf of Nevada State College (“College”) have entered into a Ground Lease Agreement, dated as of June [\_\_\_], 2018 (hereinafter the “Ground Lease”), and a Development Agreement, dated as of the same date (the “Development Agreement”), pursuant to which the Company is obligated to develop, finance, construct, furnish, equip the Project (as defined herein) for the use and benefit of the College.

C. The Project consist of an approximately 312-bed student housing facility, including the buildings, furniture, fixtures, machinery, equipment and pre-opening costs therefor and related facilities being developed pursuant to the Development Agreement, belonging to or to belong to the Authority, located on the campus of the College in the City of Henderson, Clark County, Nevada, as more specifically described in the Ground Lease.

D. The Company has subleased the Premises to Authority pursuant to that certain Ground Sublease Agreement dated as of June [\_\_\_], 2018.

E. The Company is entering into an Operating Agreement, dated as of June 1, 2018 (the “Operating Agreement”), with ACC SC MANAGEMENT LLC (the “Operator”)

F. The design, construction, equipping, furnishing and pre-opening of the Project is to be financed with the proceeds of \$[XX,XXX,XXX] aggregate principal amount of Student Housing Revenue Bonds (\_\_\_\_\_), Series 2018 (the “Bonds”) to be issued by the Authority pursuant to a certain Trust Indenture, dated as of [June 30], 2018 (the “Indenture,” which term shall include the Master Glossary of Terms incorporated therein (the “Master Glossary”)), between the Authority and [(INSERT NAME OF TRUSTEE)] (the “Trustee”).

G. Company will coordinate construction of the Project pursuant to that certain Sub-Development Agreement dated as of June [\_\_\_], 2018 between Company and the Authority (the “Sub-Development Agreement”), and pursuant thereto, Company and SLETTEN CONSTRUCTION OF NEVADA, INC. have entered into that certain Design-Build Contract dated as of June [\_\_\_], 2018.

## AGREEMENTS

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, Authority and Company agree as follows:

**ARTICLE 1**  
**PURPOSE AND INTRODUCTORY PROVISIONS**

**Section 1.1. Purpose.** The purpose of this Agreement is to establish the terms and conditions upon which Company shall, as an independent contractor, monitor, supervise, coordinate, analyze and report to Authority and, as appropriate, approve acts of Operator or recommend to Authority as to its approval thereof, and otherwise act as the asset manager with respect to the pre-opening, opening, management and operation of the Project, and the performance by Operator under the Operating Agreement.

**Section 1.2. Qualified Management Agreement.** To the extent that it deals with the management of Project assets, this Agreement is intended to and shall constitute a “qualified management agreement” in compliance with applicable requirements of 141 of the Code and Rev. Proc. 2017-13, 2017-6 I.R.B. 787, and shall be interpreted in accordance with such requirements.

**Section 1.3. Operating Agreement.** Contemporaneously with the execution hereof, Company and Operator are entering into the Operating Agreement under which Operator shall operate the Project.

The Company shall not terminate Operating Agreement or enter into an operating agreement with another operator without receiving the written approval of the Authority and, to the extent required under the Ground Lease, the College.

**Section 1.4. Definitions.** All capitalized terms used without definition in this Agreement shall have the meanings assigned to such terms in the Master Glossary.

**Section 1.5. Interpretation.**

(a) Unless the context otherwise indicates, all words expressed in the singular shall include the plural and vice versa, and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter masculine or feminine gender, as appropriate.

(b) All headings of the articles and sections and subsections hereof and the table of contents hereof are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subsections are to the corresponding Articles, Sections or subsections hereof, and the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or Subsection hereof.

**Section 1.6. Authorization.** Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to authorize the execution of this Agreement by the officers and persons signing it on its behalf.

**Section 1.7. Authority Representation and Covenants.** The Authority represents and covenants as follows:

(a) The Authority is a unit of government and body corporate and politic of the State of Wisconsin, duly organized, validly existing and in good standing under the laws of the State of Wisconsin with full legal right, power and authority to execute, deliver and perform its obligations under this Agreement and to take any action pursuant to or described in this Agreement.

(b) The Authority has duly authorized the execution, delivery of and performance by the Authority of its obligations under this Agreement.

(c) This Agreement has been duly executed and delivered by the Authority and constitutes the valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, subject to the following qualifications: (i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium, redemption, fraudulent transfer and other similar laws affecting the rights of creditors generally; (ii) general principles of equity (whether applied by a court of law or equity); (iii) to the exercise of judicial discretion in appropriate cases; (iv) the limitations on legal remedies against Wisconsin governmental units such as the Authority; and (v) to limitations on Authority's liability hereunder.

(d) All approvals, consents and orders of any governmental authority, board, agency or commission of the State of Wisconsin having jurisdiction or required by the Act which would constitute a condition precedent to the Authority's execution and delivery of this Agreement have been obtained.

(e) The Authority's execution, delivery and performance of its obligations hereunder does not and will not conflict with, or constitute a breach by the Authority or a default by the Authority under, any law, any court decree or order, any governmental regulation, rule or order, any resolution or any agreement, indenture, mortgage or other instrument to which the Authority is subject or by which it is bound.

(f) All approvals, consents and orders of any governmental authority having jurisdiction in the matters which would constitute a condition precedent to any of the actions to be taken by the Authority or the enforceability against the Authority of this Agreement have been obtained and are in full force and effect.

(g) To the Authority's knowledge there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board or body pending or threatened, against or affecting the Authority wherein an unfavorable decision, ruling or finding could adversely affect the enforceability of this Agreement.

(h) To the Authority's knowledge, (a) all permits, approvals, orders, licenses, governmental approvals, governmental reviews and authorizations necessary for the performance by the Authority or its obligations under this Agreement or the actions taken or to be taken by the Authority in connection with the Project that are required by law to be obtained by the Authority as of the date hereof have been obtained; (b) those that are



not required by law to be obtained as of the date hereof are expected to be obtained in due course; and (c) said ownership, construction and operation are not in conflict with any law, regulation, rule or order applicable to the Authority or its property.

(i) Subject to the provisions of Section 66.0304(12) of the Act, the Authority shall maintain its status as a body corporate and politic of the State of Wisconsin and shall act at all times in compliance with Applicable Laws.

(j) The Authority will not knowingly take any action in violation of the Indenture, or any other document evidencing, securing or relating to the Bonds and the Related Documents.

(k) The Authority will not knowingly take any action in violation of any permits and approvals (whether governmental or contractual) related to the Project.

**Section 1.8. Company's Covenants, Representations and Warranties.** Company represents and warrants or, as applicable, covenants, as follows:

(a) **Financial Condition.** Company has and, during the term hereof, shall continue to have sufficient capitalization from its members to carry out the obligations of Company under this Agreement and to pay all debts of Company as they become due.

(b) **Company Existence.** Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada and is duly qualified to do business in the State of Nevada. Company will maintain and preserve in full force and effect, its existence and rights, franchises, licenses and qualifications necessary to continue its business.

(c) **Litigation.** There is no action, suit, investigation or proceeding by or before any Governmental Authority pending or, to Company's or any of its Members' knowledge, threatened against or affecting Company or any of its properties, rights, revenues or assets, the Site or the Project (A) which may have a material adverse effect on the properties, business, prospects, operations or financial condition of Company, or (B) which may have an adverse effect on the construction, use, maintenance or operation of the Project as contemplated by the Transaction Documents.

(d) **Payment of Taxes.** Company has filed or caused to be filed all tax returns which are required to be filed by it, and has paid or caused to be paid all taxes shown to be due and payable on such returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property the failure of which to so pay would have a material adverse effect on the properties, business, prospects, operations or financial condition of Company, or would have an adverse effect on the construction, use, maintenance or operation of the Project as contemplated by the Transaction Documents.

(e) **Power and Authorization.** Company has full power and authority and legal right to execute, deliver and perform this Agreement and the other Transaction Documents to which it is or is to become a party, and the execution, delivery and

performance by Company of this Agreement and the other Transaction Documents to which it is or is to become a party have been duly authorized by all necessary company and legal action on the part of Company and does not require the approval of any other Person or the approval or consent of any trustee or holders of any Indebtedness or obligations of Company, except those approvals and consents which shall have been obtained, and copies of which have been furnished to Authority and which shall be in full force and effect on the date hereof and at all times thereafter.

(f) **Execution, Delivery and Enforceability.** This Agreement and each other Transaction Document to which Company is a party have been duly executed and delivered by Company, and constitute, and each other Transaction Document to which Company is to become a party will upon execution and delivery thereof by Company will constitute, a legal, valid and binding obligation of Company, enforceable against Company in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity.

(g) **No Legal Bar.** The execution, delivery and performance by Company of this Agreement and the other Transaction Documents to which it is or is to become a party will not violate any provision of the Company's operating agreement or, assuming that the Project is constructed by Design Builder in compliance with all applicable laws, permits, approvals, consents and authorizations and with all applicable terms and conditions of the Transaction Documents, (x) will not violate any provision of any applicable law binding on Company its members or on any of their respective assets, (y) will not require Company or its members to obtain any consent, approval or authorization of, or to register with, any governmental authority or agency of the United States or the State of Nevada (or any subdivision thereof), and (z) will not violate any provision of, or constitute or create a default under, any contractual obligation of Company or its member and will not result in the creation or imposition of any Lien (other than Permitted Liens) on the Site, the Project or any of the assets, properties or revenues of Company or its members pursuant to any applicable law or contractual obligation, in each case pursuant to clauses (x) and (y) above, due solely to the status of Company as the manager of the operation of the Project.

**Section 1.9. Authority's Designated Agent.** The Authority has appointed GPM Municipal Advisors, LLC as its representative for purposes of this Agreement, who is empowered to act on behalf of the Authority to give or receive notices, give or withhold any consents or approvals, and to impose conditions upon any such consent or approval. Company shall be entitled to rely on any written consents or written approvals given by an authorized representative of the Designated Agent. If the Authority revokes the designation of the Designated Agent and appoints a new Designated Agent at any time, Company shall be entitled to rely on written consents or written approvals given by an authorized representative of the previously-appointed Designated Agent until Company has received actual notice from the Authority of such revocation and appointment.

**ARTICLE 2  
COMMENCEMENT AND TERM**

**Section 2.1. Commencement.** This Agreement shall be binding on Authority and Company as of the date of this Agreement, but the term of this Agreement (the “Term”) shall commence on the Opening Date and shall terminate as set forth in Section 2.2 hereof. The parties shall sign a written document memorializing the Opening Date within a reasonable time thereafter.

**Section 2.2. Term.** The Term, unless earlier terminated pursuant to Sections 10.2, 10.3, or 10.4 hereof, shall continue until 11:59 p.m. on the date (the “Expiration Date”) that is one day prior to the thirtieth (30th) anniversary of the Opening Date.

**ARTICLE 3  
APPOINTMENT, AUTHORITY AND DUTY OF MANAGER**

**Section 3.1. General Managerial Responsibility.** Subject to the terms of this Agreement, Authority hereby engages Company, as an independent contractor and not as an agent, and Company hereby agrees to be so engaged and does undertake to monitor, supervise, coordinate, analyze and report to Authority and, as appropriate, approve acts of Operator or recommend to Authority as to its approval thereof, and otherwise act as the asset manager with respect to the pre-opening, opening, management and operation of the Project, and the performance by Operator under the Operating Agreement.

**Section 3.2. Operating Standards.** During the Term, and subject to the terms and conditions of this Agreement, Company shall cause the Project to be operated in a manner consistent and in material compliance in all respects with the requirements and limitations set forth in this Agreement, in the Operating Agreement, and in the Indenture, Ground Lease, Ground Sublease, Leasehold Deed of Trust, and Tax Agreement. IT IS SPECIFICALLY AND EXPRESSLY UNDERSTOOD, ACKNOWLEDGED AND AGREED BY COMPANY THAT ITS DUTIES AND OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT BE DEEMED OR CONSTRUED IN ANY MANNER AS BEING MODIFIED, LIMITED OR NARROWED BY ANY PROVISION OF THE OPERATING AGREEMENT THAT ASSIGNS OR DELEGATES TO THE OPERATOR RESPONSIBILITY FOR COMPLIANCE WITH ANY ENUMERATED PROVISIONS OF THE FOREGOING DOCUMENTS OR OTHERWISE (EXCEPT WHERE THE OPERATING AGREEMENT EXPRESSLY PROVIDES THAT THE AUTHORITY OR THE COLLEGE SHALL HAVE THE RIGHT TO APPROVE, CONSENT TO OR DIRECT THE OPERATOR), AND THAT, NOTWITHSTANDING ANY IMPLICATION THAT THE AUTHORITY APPROVED OF THE FORM THEREOF, NO FAILURE, INACCURACY, ERROR, INCOMPLETENESS OR OTHER DEFECT IN THE OPERATING AGREEMENT, AND NO BREACH, NEGLIGENCE OF DUTY OR FAILURE TO PERFORM BY OPERATOR ITS DUTIES AND OBLIGATIONS UNDER THE OPERATING AGREEMENT, SHALL SERVE TO ABSOLVE, NULLIFY, OR RELIEVE COMPANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR AS A DEFENSE TO ANY CLAIM OR CAUSE OF ACTION BY THE AUTHORITY ARISING OUT OF AN ALLEGATION THAT COMPANY IS IN BREACH OR DEFAULT OF ITS OBLIGATIONS HEREUNDER

**Section 3.3. Supervision of Operator.** Company's specific duties hereunder shall include, *inter alia*, (a) monitoring and observing Operator's performance under the Operating Agreement, (b) approval or disapproval of certain activities of Operator thereunder, (c) review and analysis of Operator's activities thereunder, and providing reports and recommendations to Authority and obtaining Authority's approval/rejection of same, and (d) review and analysis of Operator's activities thereunder, and providing reports to Authority regarding Company's approval/rejection of same, all as to the performance by Operator of the specific duties required of it under the Operating Agreement. In performance of its duties hereunder, employees, agents or representatives of Company shall visit the Project as part of its monitoring process an average of at least one time per week during the first Operating Year of operation and thereafter, as frequently as is necessary in the exercise of good business judgment. The parties acknowledge that after the first Operating Year, the extent of on-site visits may vary from year-to-year depending on occupancy and operations at the Project. Reports on performance pursuant to this inspection shall be delivered to Authority annually, along with comments by Company with respect to Operator's performance and Company's suggestions for future operation and improved operations.

Company shall submit annual reports to Authority summarizing all observations and findings as to Operator's performance under the Operating Agreement.

**Section 3.4. Approvals Under Operating Agreement.**

**Section 3.4.1 Authority Approval Required.** With regard to each and every request for approval, disapproval, consent or determination that is required to be obtained from Authority under the Operating Agreement, or under any of the Sublease or the Leasehold Deed of Trust, Company shall do the following: (i) review, analyze, and make a recommendation to the Authority as to the Authority's action in respect thereof; (ii) insure that the Authority's decision to approve, disapprove, consent or otherwise is obtained from the Authority in writing and transmitted or delivered to the Operator in a timely manner in accordance with the applicable deadlines for such action; (iii) in cases where Company's approval is also required, grant or withhold its own approval consistent with its recommendation to the Authority (which it may do in its discretion regardless of whether the Authority acts consistent with or contrary to such recommendation); and (iv) in cases where the College's approval is also required, coordinate with the College and its representatives to insure that the Authority is informed as to the College's intentions, and vice versa, and to facilitate communications between the College and the Authority as appropriate.

**Section 3.4.2 Other Items.** With respect to specific acts by Company hereunder or under the Operating Agreement, which are not described or enumerated herein or therein, Company shall be required to obtain the prior written consent of Authority as to Company's (or Operator's) acts only when the same are such that the effect of such act could have a material adverse effect on the operations of the Project or the condition of the Project property. Company may not delegate the performance of its duties under this Agreement to any third party, but may retain independent contractors (e.g., for accounting and performance rating audits) and for other duties, subject to Authority's approval. Any contract entered into by the Company in connection with the performance of its duties under this Agreement shall comply in every respect with the provisions of Section 10(c) of the Operating Agreement.

**ARTICLE 4  
BUDGET PROCESS**

**Section 4.1. Review of Budgets; Control Over the Project.**

**Section 4.1.1** Company shall devote all time and manpower required to discuss, negotiate and recommend to Authority an Operating and Budget Plan acceptable to Authority. The Operating and Budget Plan shall be subject to approval by the Authority. Additionally, the Authority shall approve (a) capital expenditures with respect to the Project, (b) each disposition, if any, of property that is part of the Project, and (c) rates charged with respect to the Project. Annually, the Company shall submit to the Authority an Operating and Budget Plan, which shall include any capital expenditures to be made with respect to the Project, any dispositions of property that are part of the Project, and the rates to be charged with respect to the Project, which shall be subject to the approval of the Authority. The parties acknowledge that the College has certain rights and responsibilities with respect to the foregoing under the Ground Lease and nothing herein shall relieve the Company of its obligations to the College with respect thereto.

**ARTICLE 5  
CERTAIN COVENANTS OF THE PARTIES**

**Section 5.1. Negative Covenants of Company.** Without limiting Company's other obligations hereunder, Company shall not do, or permit or authorize others to do, any of the following:

- (a) Deal with the Project and/or its assets in any manner or for any purposes other than as herein set forth;
- (b) Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Company, be reasonably foreseeable to cause material damage to the Project or its reputation or the reputation of the Authority;
- (c) Abandon its duties hereunder during the Term;
- (d) Knowingly use or occupy, or knowingly permit the Operator to use or occupy, or knowingly permit the Project or any part thereof to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of Hazardous Material), or operate or conduct the business of the Project in any manner known to constitute or give rise to a nuisance of any kind;
- (e) Except as may be approved in writing by the Authority, consent to Operator making, authorizing or permitting any material modifications or alterations to the Project except as expressly authorized by this Agreement;
- (f) Interfere with Authority's rights hereunder or under the Operating Agreement, or any other agreement referred to herewith or therein;

(g) Enter into contracts which would materially adversely affect the construction, operation, financing or economics of the Project or the transactions contemplated by the Transaction Documents;

(h) Do anything inconsistent with, or that will cause a default under, the Tax Certificate, the Operating Agreement, the Indenture and/or any other agreement relating to the Bonds or the Project to which Authority is a party; or

(i) Except as permitted under the Operating Agreement or unless the Company gives notice to the Authority of an emergency, enter into or amend or consent to Operator entering into or amending any contract or agreement affecting the Project that conflicts in any material respect with the terms of this Agreement and/or the Operating Agreement and is other than a contract (i) the terms and conditions of which are expressly referred to in an approved Operating Plan and Budget or Capital Budget, (ii) the terms and conditions of which are not expressly referred to in an approved Operating Plan and Budget or Capital Budget, but for which funds are allocated in a line item of an approved Operating Plan and Budget or Capital Budget, (iii) for the provision of utilities, or (iv) for the provision of employee benefits.

**Section 5.2. Negative Covenants of Authority.** Except as otherwise expressly permitted hereunder, Authority shall not interfere with Company's rights or benefits hereunder.

**Section 5.3. Affirmative Covenants of Company.** Without limiting Company's obligations hereunder, Company shall:

(a) Cause the Operator to comply with the terms of the Operating Agreement; provided, however, that nothing herein shall require the Company to pay, from Company funds, any attorneys' fees, litigation or any portions of Project Operating Expenses;

(b) Perform its obligations hereunder; and

(c) Immediately notify Authority of any Event of Default by Operator under the Operating Agreement, and provide copies to Authority of any notices, reports or other writings, which it receives from Operator or in connection with the Operating Agreement.

**Section 5.4. Affirmative Covenants of Authority.** Without limiting Authority's obligations hereunder, Authority shall assert all of its rights under the Bond Documents to receive the proceeds of the Bonds that are payable to Authority thereunder.

## ARTICLE 6 MANAGEMENT FEES

**Section 6.1. Management Fee.** For the services Company provides hereunder, Company shall receive as a budgeted operating expense a Management Fee consisting of the Senior Management Fee and the Subordinate Management Fee as specified herein.

**Section 6.1.1 Senior Management Fee.** The Senior Management Fee will be four percent (4%) of Revenue of the Project, payable monthly, within thirty (30) days of the end of

each calendar month in arrears. For the purposes of calculating fees, the first month's fee accrual begins on the opening day of the Project and ends on the last day of the month in which the opening day of the Project occurs and, to the extent that this Agreement is terminated prior to the Expiration of the Term or, in the event that the Term expires on a date other than the end of a month, the Senior Management Fee shall be prorated based on (a) revenue for the month in which the Term expires, and (b)(i) the number of days between the beginning of the month in which the Term expires until the Term expires, and (ii) the total number of days of the month in which the Term expires. The Senior Management Fee shall be considered an Operating Expense of the Project. In the event that Revenues deposited in the O&M Fund are insufficient to pay the Senior Management Fee for any period, the payment of the Senior Management Fee shall be deferred to the next month in which Revenues deposited in the O&M Fund are sufficient to pay (w) the then-current month's Senior Management Fee, and (x) any deferred portion of prior Senior Management Fees. Payments of the Senior Management Fee shall be applied first to deferred Senior Management Fees (applied first to the longest-deferred Senior Management Fees), and then to current Senior Management Fees due. Senior Management Fees deferred shall bear interest at the lesser of (y) six percent (6%) per year, or (z) the maximum rate allowed by law, in each case compounded annually, and in all events shall be payable (with any applicable late payment interest) not later than five years following the due date of such Senior Management Fee.

**Section 6.1.2 Subordinate Management Fee.** The Subordinate Management Fee is comprised of four percent (4%) of the Revenues from the operation of the Project. The Subordinate Management Fee shall be paid from Revenues deposited in the Subordinate Management Fee Account created under the Indenture. In the event that Net Revenues deposited in the Subordinate Management Fee Account are insufficient to pay the Subordinate Management Fee for any period, the payment of the Subordinate Management Fee shall be deferred to the next month in which Revenues deposited in the Subordinate Management Fee Account are sufficient to pay (w) the then-current month's Subordinate Management Fee, and (x) any deferred portion of prior Subordinate Management Fees. Payments of the Subordinate Management Fee shall be applied first to deferred Subordinate Management Fees (applied first to the longest-deferred Subordinate Management Fees), and then to current Subordinate Management Fees due. Subordinate Management Fees deferred shall bear interest at the lesser of (y) six percent (6%) per year, or (z) the maximum rate allowed by law, in each case compounded annually, and in all events shall be payable (with any applicable late payment interest) not later than five years following the due date of such Subordinate Management Fee.

The parties hereto acknowledge that the Subordinate Management Fee represents, in part, deferred development fees to be received by the Company for development activities which predated the effective date of this Agreement.

**Section 6.1.3 Reimbursement of Certain Expenses.** In addition to amounts payable to the Company in Section 6.1.1 and Section 6.1.2, the Company shall be reimbursed as an Expense of the Project the following:

- (a) Expenses of travel in connection with the operation of the Project;
- (b) Company's accounting and audit fees related to the Project;

(c) legal fees and cost relating to the operation, repair or maintenance of the Project or incurred in order to reduce operating expenses, service or management contracts with independent contractors;

(d) any Project Expenses set forth in an approved Annual Budget paid by the Company; and

(e) any other expense approved by the Authority for reimbursement.

**Section 6.2. Limitations on Fees.** Authority and Company agree that Company shall not be entitled to any fees or other compensation of any nature whatsoever in connection with the delivery of services which Company is expressly required to provide to the Authority pursuant to this Agreement except as expressly provided for in this Agreement; provided, however, that the Company shall be entitled to reimbursement for its actual costs of performing its duties under this Agreement including, without limitation, travel expenses incurred in connection with the performance, administration, and enforcement of this Agreement.

**Section 6.3. Continuing Obligation.** The termination of this Agreement, by the lapse of time or otherwise, shall not relieve the right of Company to receive any fees or charges, paid from the sources set forth herein, that have accrued during the period in which this Agreement is in effect.

**Section 6.4. Limited Liability of Authority.** Notwithstanding anything to the contrary in this Agreement or any other document or instrument to which the Authority is a party, whether express or by implication or construction or interpretation or otherwise, Company acknowledges and agrees that the Authority is not liable or obligated in any manner under this Agreement or otherwise to pay or cause to be paid any fees, expenses or reimbursements or to make any other payments or advance funds under this Agreement or the Operating Agreement or otherwise, or incur or cause to be incurred any expense in pursuing any course of action, in connection with the Project or any other matter within the scope of or contemplated by this Agreement or the Operating Agreement or be liable (directly or indirectly) for any claims, proceedings, costs or expenses of any kind for any reason in connection with or in any way related to this Agreement or the Operating Agreement or any other document or instrument to which the Authority is a party related to the Project, its financing, development, operation, management or otherwise, except only to the extent that monies are held by the Trustee and available therefor as expressly set forth hereunder and in accordance with the Indenture, and provided, that the Authority shall not be required to incur any expense or liability in pursuing any claim against such monies for the benefit of the Company or any other Person. Company further acknowledges and agrees that it must adhere to the provisions of the Indenture in requesting disbursements from the funds and amounts held by the Trustee for payment of all of its costs, expenses, and compensation payable by the Authority hereunder out of the applicable Operating Account as Operating Expenses and out of the amounts paid to the Company as Budgeted Operating Expenses and to the extent that funds are available therefor under the priority of payments set forth in the Indenture and Bond Documents. TO THE EXTENT THAT FUNDS OR PROPERTY ARE HELD BY THE TRUSTEE BUT NOT SUFFICIENT FOR SUCH PURPOSE, COMPANY WILL BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE,



LOSS OR DAMAGE FROM THE AUTHORITY AND MAY BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM ANY OTHER PERSON.

## **ARTICLE 7 COSTS AND EXPENSES OF PROJECT**

**Section 7.1. Revenues.** Revenues derived from operating the Project, together with any interest earned in connection with operating funds, shall be received and dealt with in accordance with the provisions related thereto contained in the Operating Agreement. Expenses arising out of operation of the Project, including travel costs, auditor fees related to the Project whether incurred by the Company or the Operator and the cost of insurance required by the Master Insurance Schedule, which will constitute Operating Expenses, and including capital expenditures, shall likewise be dealt with as set out in the Operating Agreement.

## **ARTICLE 8 MONTHLY REPORTS, ACCOUNTING RECORDS AND REPORTS**

**Section 8.1. Reports.** Company shall endeavor to ensure that each report and request for approval received by it from Operator, under the terms of the Operating Agreement, shall be received by it and that a log is kept as to the time and date of delivery of each such report and request. Company shall deliver a copy of each such report and request received by it to the Authority by 12:00 p.m./noon on the fifth business day after Company's receipt of same from Operator. Additionally, Company shall deliver written reports of its activities under this Agreement to Authority on a regular quarterly basis.

**Section 8.2. Books and Records of the Project.** Authority and Authority's designated agent(s) shall, at any time throughout the term of this Agreement, have the right to review the books and records of the Project upon 72 hours' prior notice to the Company. Company shall cooperate with Authority and Authority's agent in connection with such review.

**Section 8.3. Other Reports.** Company shall prepare, or shall cause Operator to prepare, any other reports that Authority may reasonably request from time-to-time, including such reports as set forth in Exhibit B to the Operating Agreement.

## **ARTICLE 9 INSURANCE**

**Section 9.1. Master Insurance Schedule.** At all times during the Term of this Agreement, Company and the Authority shall secure and maintain all insurance required to be maintained by them, respectively, pursuant to the Master Insurance Schedule. Company shall periodically monitor and review all policies of insurance maintained by Operator under the Operating Agreement to determine that such policies meet the requirements of the Master Insurance Schedule applicable thereto and may consult with the Authority's Insurance Consultant appointed under the Indenture in respect thereof.

## ARTICLE 10 TERM AND TERMINATION

**Section 10.1. Term of Agreement.** Unless sooner terminated pursuant to the provisions hereof, the term of this Agreement shall be the Term specified in Section 2.2 of this Agreement or as otherwise agreed to in writing by Authority and Company.

**Section 10.2. Events of Termination.** This Agreement shall terminate automatically upon the earlier of: (a) the expiration of the Term, (b) at such time as the Bonds are no longer Outstanding under the terms of the Indenture, or (c) at such time as the Sublease terminates, and may otherwise be terminated only under the following circumstances and subject to the following conditions:

- (a) A termination by Authority for an Event of Default of Company under Section 10.3; or
- (b) A termination by Company for an Event of Default of Authority under Section 10.4; or
- (c) A termination under Section 10.6, 10.7, 10.8 or 10.9.

**Section 10.3. Termination by Authority.** Authority may unilaterally terminate this Agreement, with such termination to be effective on a date chosen by Authority, of which Company has been given at least ten (10) days' prior written notice, if at any time or from time to time during the term of this Agreement any of the following events ("Event of Default of Company") shall occur:

- (a) If Company shall apply for or consent to the appointment of a receiver, trustee, or liquidator of Company or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against Company in any bankruptcy, reorganization, or insolvency proceedings, or if an order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Company a bankrupt or insolvent or approving a petition seeking reorganization of Company or appointing a receiver, trustee, or liquidator of Company or of all or a substantial part of its assets, and such order, judgment, or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days; or
- (b) If Company shall fail to keep, observe, or perform any covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by Company; and (i) such failure has, or if not cured, could have, a Material Adverse Effect; and (ii) such failure continues uncured for a period of thirty (30) days after Company receives notice thereof from Authority provided, however, if more than thirty (30) days is reasonably required to remedy such failure, then Authority shall not have the right to terminate this Agreement unless Company fails to (a) commence remedying such failure

within thirty (30) days after receipt of notice thereof from Authority or (b) fails to diligently pursue such remedy or fails to remedy such failure within a reasonable amount of time.

**Section 10.3.1 Authority's Other Rights.** The expiration or termination or the lack of termination of this Agreement by Authority shall be without prejudice to the rights of Authority (e.g., the lack of termination or termination of this Agreement by Authority in the event of any breach or default by Company under this Agreement whether or not Authority would have the right to do so shall be without prejudice to the right of Authority to exercise any right or remedy available to it under this Agreement or applicable law, as limited by the terms of this Agreement (including, in particular, Section 6.4 hereof), including, but not limited to, the right to seek damages and/or the right to seek specific performance); and, except as expressly provided herein, such expiration or termination shall not relieve either party of any obligations or defaults existing at the time of expiration or termination or terminate the obligations set forth in those provisions referred to in this Agreement. In the event of any termination hereunder, Company shall reasonably cooperate with Authority to facilitate a smooth transition in the management of the Project.

**Section 10.4. Termination by Company.** Company may unilaterally terminate this Agreement, with such termination to be effective on a date chosen by Company of which Authority has been given at least ninety (90) days' prior written notice, if at any time or from time-to-time during the term of this Agreement any of the following events ("Event of Default of Authority") shall occur:

(a) If the Authority shall apply for or consent to the appointment of a receiver, trustee, or liquidator of the Authority or of all or a substantial part of its assets, file a voluntary petition in bankruptcy or admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against the Authority in any bankruptcy, reorganization, or insolvency proceeding, or if an order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating the Authority a bankrupt or insolvent or approving a petition seeking reorganization of the Authority or appointing a receiver, trustee, or liquidator of the Authority or of all or a substantial part of the assets of the Authority, and such order, judgment, or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

(b) If Authority shall fail to keep, observe, or perform any covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by Authority; and (i) such failure has a Material Adverse Effect; and (ii) such failure continues uncured for a period of thirty (30) days after Authority receives notice thereof from Company, provided, however, if more than thirty (30) days is reasonably required to remedy such failure, then Company shall not have the right to terminate this Agreement unless Authority fails to (a) commence remedying such failure within thirty (30) days after receipt of notice thereof from Company or (b) fails to diligently pursue such remedy or fails to remedy such failure within a reasonable amount of time.

- (c) If an Event of Default occurs under the Bond Documents.

**Section 10.4.1 Company's Other Rights.** The expiration or termination or the lack of termination of this Agreement by Company shall be without prejudice to the rights of Company (e.g., the lack of termination or termination of this Agreement by Company in the event of any breach or default by Authority under this Agreement whether or not Company would have the right to do so shall be without prejudice to the right of Company to exercise any right or remedy available to it under this Agreement or applicable law, as limited by the terms of this Agreement, including, but not limited to, the right to seek damages and/or the right to seek specific performance); and, except as expressly provided herein, such expiration or termination shall not relieve either party of any obligations or defaults existing at the time of expiration or termination or terminate the obligations set forth in those provisions referred to in this Agreement.

**Section 10.4.2 Company's Duties Upon Termination.** Company shall cooperate with Authority and do all things reasonably requested by Authority to ensure a smooth transition in the event this Agreement is terminated. Without limiting the generality of the foregoing, Company shall assign and transfer as of the termination date, to Authority (i) all of Company's books and records with regard to the Project (and to the extent any records are computerized Company shall provide disks containing such information), and (ii) all of Company's interest in and to any leases, licenses (including any liquor license and license to use any proprietary software used at the Project), contracts or other agreements (including the Operating Agreement) relating in any way to the Project to which Company is a party; provided that Authority shall have the right to direct Company, in lieu of an assignment and transfer to Authority of the foregoing, to terminate all or any of the same (other than the Operating Agreement) as of the date on which this Agreement is terminated; *provided, however*, that for any such contracts or other agreements that were entered into in accordance with this Agreement or the Operating Agreement (and not in violation of any of the terms and conditions of such agreements), Authority shall, subject to Section 6.4, indemnify, defend and hold Company and its Affiliates and their respective directors, employees, agents and assigns harmless from and against any and all claims, demands, actions, penalties, suits, and liabilities, including the cost of defense, settlement, appeal, reasonable attorneys' fees and costs and any other amounts that Company is required to pay to third parties in connection with such terminations.

**Section 10.5. No Sale of Project by the Authority.** The Authority shall not sell or otherwise dispose of the Project (or any portion thereof) during the Term.

**Section 10.6. Termination - Insufficient Funds Available to Maintain Operating Standard.** Notwithstanding any other provision of this Agreement, Company shall have the right (the "Deficiency Termination Right") to terminate this Agreement (but shall not have the right to a Termination Fee or any other fee, or to any damages for breach of contract as a result of such Deficiency and resulting termination), if there are insufficient funds available pursuant to the terms of this Agreement (a "Deficiency") to pay (i) Company's Senior Management Fee, Project Operating Expenses, as applicable, or other items payable under the Operating Agreement.

## **ARTICLE 11 ASSIGNMENT**

**Section 11.1. Restrictions on Assignment.** Except as expressly provided otherwise in Article 11, neither Party may assign, pledge, encumber, or otherwise transfer in any manner its interest in this Agreement, or any of its rights or obligations under this Agreement (any such event being referred to as an “Assignment”) without the prior consent of the other Party. Any Assignment by a Party in violation of the terms of this Article 11 shall be void and of no force between the Parties and shall constitute a material breach of this Agreement by the assigning Party, governed by the terms of this Article 11. An assignment of an ownership interest in the Company shall not be deemed an assignment hereunder.

**Section 11.2. Assignment by Company.** Company shall have the right to assign its rights and/or obligations under this Agreement to any Person qualified and capable of performing Company’s duties hereunder upon Authority’s prior written consent. Authority may not refuse to consent to an assignment to a Person with established expertise and actual experience in asset management of student housing properties provided that (i) such Person agrees to assume Company’s obligations (including indemnification obligations) under this Agreement or a substantially similar agreement acceptable to the Authority; (ii) demonstrates the financial wherewithal and capacity to perform its obligations in connection therewith; and (iii) if requested, the Authority is furnished with an unqualified opinion of nationally recognized bond counsel acceptable to the Authority that such contract will not adversely affect the exclusion from gross income of interest on the Bonds under Section 103 of the Internal Revenue Code.

**Section 11.3. Assignment by Authority.** Notwithstanding anything to the contrary in this Agreement, Company acknowledges that the Authority may assign, convey, encumber or hypothecate the Project or any part thereof or any constituent ownership interest in Authority, or assign this Agreement, or any interest therein, to the Bond Trustee.

**Section 11.4. Effect of Permitted Assignments.** A consent to any particular Assignment shall not be deemed to be a consent to any other Assignment or a waiver of the requirement that consent be obtained in the case of any other Assignment. Except as otherwise provided in the case of an assignment under this Article 11, (if the terms and conditions thereof are complied with), the assigning Party shall be relieved of all liabilities and obligations under this Agreement accruing after the effective date of such assignment; *provided, however*, notwithstanding the foregoing or anything to the contrary in this Article 11, no such assignment shall relieve the assigning Party from its liabilities or obligations under this Agreement accruing prior to the effective date of the Assignment.

## **ARTICLE 12 VENUE, ETC.**

**Section 12.1. Jury Waiver.** Each Party waives to the fullest extent permitted by law, trial by jury of all disputes arising out of or relating to this Agreement.

**Section 12.2. Survival and Severance.** The provisions of this Article 12 are intended to be severable from the other provisions of this Agreement and to survive and not be merged into

any termination of this Agreement or any judgment entered in connection with any dispute, regardless of whether such dispute arises before or after termination of this Agreement, and regardless of whether the related mediation, arbitration or litigation proceedings occur before or after termination of this Agreement. If any part of this Article 12 is held to be unenforceable, it shall be severed and shall not affect either the duties to mediate or arbitrate or any other part of this Article 12.

## **ARTICLE 13 GENERAL PROVISIONS**

**Section 13.1. No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the Authority and Company or their successors and assigns. Company is an independent contractor, not an agent of Authority, and shall have no authority to bind Authority in any way whatsoever.

**Section 13.2. No Inconsistent Tax Position of the Company.** Company agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the Authority with respect to the Project. Specifically, but without limiting the generality of the foregoing, Company agrees not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the Project.

### **Section 13.3. Governing Law; Jurisdiction; Venue.**

**Section 13.3.1** Except as and to the extent provided in Section 13.3.2 below, this Agreement and all disputes, claims, defenses, controversies or causes of action (whether in contract or tort) that may be based upon, arise out of or relate hereto, shall be governed by the internal laws of the State of Nevada, without regard to any conflicts of laws principles.

**Section 13.3.2** Notwithstanding Section 13.3.1, any disputes, claims, defenses, controversies or causes of action based upon, arising out of or relating to the following enumerated matters shall be governed by the laws of the State of Wisconsin, excluding conflicts of law principles: (i) the Authority's organization, existence, statutory and corporate powers, and legal and contractual capacity; (ii) the Authority's right to the payment of its fees, costs and expenses, including, but not limited to, attorneys' fees, costs of investigation and the expenses of other professionals retained by the Authority and the reasonableness of such fees, costs, and expenses; (iii) the Authority's and the Authority Indemnified Persons' rights to indemnification from Company (and Company's corresponding obligation to provide such indemnification); (iv) Company's release of the Authority and the Authority Indemnified Persons from liability; (v) exculpation of the Authority and the Authority Indemnified Persons from pecuniary liability and any limitations thereon; and (vi) the Authority's governmental rights, privileges and immunities.

**Section 13.3.3** All claims of whatever character arising out of this Agreement shall be brought in any state or federal court of competent jurisdiction located in Clark County, Nevada; provided, that to the extent that a dispute, claim, controversy or cause of action enumerated in Section 13.3.2 can be separated, from other disputes under this Agreement ("Separate Dispute"), such Separate Dispute shall be adjudicated by a state or federal court of

competent jurisdiction located in Dane County, Wisconsin. By executing and delivering this Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of *forum non conveniens*; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Authority of any prior notice or procedural requirements applicable to actions or claims against or involving joint powers commissions or governmental units of the State of Wisconsin that may exist at the time of and in connection with such matter.

**Section 13.4. Notices.**

(a) All notices required or permitted under this Agreement from the Company to the Authority shall be sent to the Authority addressed to:

c/o the Designated Agent  
GPM Municipal Advisors, LLC  
2999 Oak Road, Suite 710  
Walnut Creek, CA 94597  
Attention: Program Operator

(b) All notices required or permitted under this Agreement from the Authority to the Company shall be sent to the Company addressed to:

American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Tony Traub  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: ttraub@garfieldtraub.com

(c) Any notice required or permitted under this Agreement shall be deemed delivered only (i) upon transmission by electronic mail providing a confirmation of receipt, so long as a hard copy of such notice is deposited within twenty-four (24) hours after transmission for overnight delivery with a nationally recognized overnight courier service that provides a receipt of delivery; or (ii) one (1) day after deposit for overnight delivery with a nationally recognized overnight courier service that provides a receipt of delivery, or (iii) upon receipt by the appropriate addressee listed above.

(d) Either party may change its address and electronic mail address for notice hereunder by providing the other party with ten (10) days' prior written notice thereof; provided that neither party may ever specify that notice is to be delivered to more than three people.

**Section 13.5. Amendment.** This Agreement may be amended or modified only by mutual agreement of Authority and Company in writing and signed by each of the parties hereto; provided, however, so long as the Bonds remain outstanding, no amendment to this Agreement

shall be effective as between the Parties unless Trustee has consented to such amendment if required under the Indenture.

**Section 13.6. Indemnification by Company.**

**Section 13.6.1** Company shall indemnify, defend and hold the Authority and each Authority Indemnified Person (each an “Indemnitee”) harmless from and against all Company-Indemnified Liabilities. Notwithstanding the foregoing sentence, such indemnity shall not be available to the extent that the Company-Indemnified Liability is determined by final and nonappealable judgment of a court of competent jurisdiction by to have resulted from the willful misconduct of the Indemnitee seeking indemnification, or from a claim brought by Company against such Indemnified Person for a material breach in bad faith of such Indemnitee’s obligations hereunder.

**Section 13.6.2 Scope of Indemnity Obligation.** Company expressly acknowledges and agrees that each Indemnitee shall be held harmless and indemnified hereunder from and against Company-Indemnified liabilities arising from an Indemnitee’s own negligence of any kind, description or degree (without regard to or application of the comparative negligence provisions of Section 895.045 of the Wisconsin Statutes), or breach of contractual duty, except insofar as such indemnity is not available as provided in the second sentence of Section 13.6.1 above.

**Section 13.6.3 Procedure for Indemnification.** In the event that any action or proceeding is brought against any Indemnitee with respect to which indemnity may be sought hereunder, Company, upon written notice from the Indemnitee shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnitee, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnitee shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnitee shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof. Company shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnitee may only employ separate counsel at the expense of Company if in the judgment of such Indemnitee a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

**Section 13.6.4 Use and Benefit of Indenture Funds.** Except as may be derived from insurance proceeds as set forth in Section 13.6.5, below, Company acknowledges and agrees that its obligation to defend, indemnify and hold the Indemnified Persons harmless from and against Company-Indemnified Liabilities shall not be funded by the Indenture Funds or diminished in any respect by the availability of the Indenture Funds or the use or application by Owner of Indenture Funds to satisfy any Liabilities (including Operator-Indemnified Liabilities) hereunder and that such use or application by Owner for such purpose shall not affect in any manner Company’s obligation to reimburse Owner therefor. This paragraph shall apply regardless of whether Indenture Funds at any time include any money provided by Company.



**Section 13.6.5 Insurance.** It is the Authority's and Company's intent to look first to the insurance coverage required pursuant to this Agreement for both legal defense and payment of any Liabilities subject to the provisions of this Section 13.6. Therefore, the Authority and Company agree that, notwithstanding any indemnity language to the contrary, in the event that Liability arises which is covered by the insurance required pursuant to the Indenture or this Agreement, the Company shall cause such insurance to be paid in accordance with such policies, and to the extent of such payment, the procedures related to indemnity in Section 13.6.3 above, shall not apply; provided, that the foregoing shall not have any effect whatsoever on an Indemnitee's underlying right to indemnity. As to any Liabilities paid by insurance, the Parties agree to waive all rights of subrogation, regardless of whether the negligence or fault of the other party or other party's agents, officers, or employees causes or is alleged to have caused such claim, liability, loss or damage.

**Section 13.6.6 Issuer Extraordinary Expense Fund.** The Authority shall look to the Issuer Extraordinary Expense Fund only if and to the extent (i) Company is not required to indemnify any Indemnitee for any Liability pursuant to this Section and (ii) such Liability is not fully paid by applicable insurance.

**Section 13.6.7 Defined Terms.** The following definitions shall apply:

(1) ***"Company-Indemnified Liabilities"*** means Liabilities arising from: (A) any acts or omissions of Company or Operator or their respective agents, representatives, contractors or employees constituting [gross] negligence, willful misconduct, malice or fraud and/or criminal activity in connection with services of Company or Operator or their respective agents, representatives, contractors or employees arising out of or relating to the operation of the Project; (B) Employment-Related Liabilities; (C) any violation of this Agreement or the Operating Agreement or of any Applicable Law by Company or Operator, respectively, or their respective agents, representatives, contractors or employees; (D) any Operator-Indemnified Liabilities under the Operating Agreement; or (E) any losses suffered as a result of theft, embezzlement, fraud or other dishonesty by Company or Operator or their respective agents, representatives, contractors or employees.

(2) ***"Employment-Related Liabilities"*** means all Liabilities arising out of Company's, Operator's or any other Person's labor and employment-related activities (such as, by way of illustration, interviewing, hiring, training, supervising, discharging, and paying all personnel necessary to maintain and operate the Project, employment discrimination, wage & hour disputes, civil rights, unfair labor practices, OSHA and ADA compliance. For avoidance of doubt, Employment-Related Liabilities shall constitute Company-Indemnified Liabilities without regard to any fault, negligence, misconduct, action or inaction on the part of Company or Operator or their respective agents, representatives, contractors or employees.

(a) Survival. The rights of any Indemnitee to indemnity hereunder shall survive termination of this Agreement and in the case of any Indemnitee, such Indemnitee's dissolution, merger or death.

(b) Third-Party Beneficiaries. To the extent of their rights hereunder to indemnification and exculpation from pecuniary liability, each Indemnitee is a third-party beneficiary of this Agreement entitled to enforce such rights in his, her, its or their own name.

**Section 13.7. Indemnification by Authority**. Subject to the limitations on Authority's liability to Company under this Agreement, in particular Section 6.4, the Authority shall indemnify, defend and hold Company and its Affiliates and their respective principals, members, officers, directors, trustees, employees, agents, and assigns harmless from and against any and all obligations, claims, demands, actions (including enforcement proceedings initiated by any governmental agency), penalties, suits, and liabilities (including the cost of defense, settlement, appeal, reasonable attorneys' fees and costs and other amounts that Company is required to pay to third parties in connection with such matters) which they or any of them may have alleged against them, incur, become responsible for, or pay out for any reason related to: (i) acts or omissions of the Authority or any Authority Indemnified Person in the performance of services in accordance with the terms of this Agreement, or in connection with winding up such services on termination of this Agreement, (ii) an event of default by Authority with respect to any provision of this Agreement; (iii) contamination of or any adverse effects on the environment arising out of the operation of the Project; and (iv) any violation of any Legal Requirements by Operator in operating the Project; provided, however, that in no event shall Authority's indemnification obligations extend to (a) Company's Grossly Negligent or Willful Acts, (b) to a breach by Company under this Agreement, (c) a breach by Company under any of the Related Agreements to which it is a party or by which it is bound; or (d) other matters with respect to which Company has indemnified Authority. In this Agreement, a Person is "grossly negligent" if such Person acts (or refrains from acting) in reckless disregard of, or with a lack of substantial concern for, the rights of others. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

**Section 13.8. Counterparts**. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**Section 13.9. Estoppel Certificates**. On request at any time and from time-to-time during the Term, each Party shall execute, acknowledge, and deliver to the other or any Trustee for the benefit of such parties and any prospective lender or purchaser, within twenty (20) days following such party's receipt of written request therefor, a certificate: (i) certifying that this Agreement has not been modified and is in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and specifying the modifications); (ii) stating whether, to the best knowledge of the signatory of such certificate, any default exists, including any Event of Default, and if so, specifying each default of which the signatory may have knowledge; and (iii) providing any additional information reasonably requested by such Party; provided, however, that in no event shall any Party be required to agree to any modifications or waivers with respect to this Agreement or other agreements in effect between the Parties.

**Section 13.10. Time.** Time is of the essence hereunder.

**ARTICLE 14  
LIMITATION ON LIABILITY**

The ownership of all Project Revenues, including receivables, and any other revenue or income of any kind derived directly or indirectly from the operations at the Project shall remain solely with Authority.

IN WITNESS WHEREOF, the parties hereto have caused this Asset Management Agreement to be executed as of the date hereinabove written.

THIS ASSET MANAGEMENT AGREEMENT is hereby executed as of the date first hereinabove written.

PUBLIC FINANCE AUTHORITY

By: \_\_\_\_\_  
President

THIS ASSET MANAGEMENT AGREEMENT is hereby executed as of the date first hereinabove written.

AMERICAN PUBLIC DEVELOPMENT,  
LLC

By: \_\_\_\_\_  
Authorized Representative

By: \_\_\_\_\_  
Authorized Representative

**FACILITY OPERATING AGREEMENT**

**BETWEEN**

**AMERICAN PUBLIC DEVELOPMENT, LLC**

**AND**

**ACC SC MANAGEMENT LLC**

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THIS FACILITY OPERATING AGREEMENT (this “Operating Agreement”) is made and effective as of the [\_\_th day of June], 2018 by and between AMERICAN PUBLIC DEVELOPMENT, LLC, a Nevada limited liability company, having its principal office in Las Vegas, Nevada (“Company”), and ACC SC MANAGEMENT LLC, a Delaware limited liability company, having its principal place of business in Austin, Texas (“Operator”).

### **Recitals**

Company and The Board of Regents of Nevada System of Higher Education (the “Board”), on behalf of Nevada State College (“College”) have entered into a Ground Lease Agreement, dated as of [June \_\_\_\_], 2018 (hereinafter the “Ground Lease”), and a Development Agreement, dated as of the same date (the “Development Agreement”), pursuant to which Company is obligated to develop, finance, construct, furnish, and equip the Project (as defined herein) for the use and benefit of the College.

Company has subleased the Premises to the Public Finance Authority, a governmental entity organized and existing pursuant to the laws of the State of Wisconsin (the “Authority”) pursuant to that certain Ground Sublease Agreement dated as of [June \_\_\_\_], 2018 (hereinafter the “Ground Sublease”). Company also entered into an Asset Management Agreement (“AMA”) with the Authority as of the same date, by which Company will act as the asset manager with respect to the management and operation of the Project, and the performance by Operator under this Operating Agreement.

Pursuant to and in accordance with the terms and conditions of the AMA, Company hereby appoints Operator to manage, operate and maintain the Project, and Operator accepts such responsibility for the term of this Operating Agreement.

The design, construction, equipping and furnishing of the Project is to be financed with the proceeds of \$XX,XXX,XXX aggregate principal amount of Student Housing Revenue Bonds (\_\_\_\_\_), Series 2018 (the “Bonds”) to be issued by the Authority pursuant to a certain Trust Indenture, dated as of [June 30], 2018 (the “Indenture,” which term shall include the Master Glossary of Terms incorporated therein (the “Master Glossary”)), between the Authority and (Insert Name of Trustee) (the “Trustee”). Capitalized terms used but not defined in this Operating Agreement shall have the respective meanings ascribed to such terms in the Master Glossary.

In consideration of the mutual promises and covenants herein contained, Company and Operator agree as follows:

Section 1. Appointment and Acceptance. Company appoints Operator as Company’s exclusive agent for the operation and maintenance of the Project, as further defined in this Operating Agreement, and Operator accepts the appointment, subject to the terms and conditions set forth in this Operating Agreement. Nothing herein or in the Bond Documents shall operate or be construed to make Operator liable or responsible for any aspect of the Project, except as specifically set forth in this Operating Agreement, and nothing herein or in the Bond Documents shall obligate Operator to be liable for any portion of the principal of, interest on or redemption premium, if any, on the Bonds. This Operating Agreement is not intended to be treated as a lease or a conveyance of ownership of the Project, and Operator agrees that it will not claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment of rent with respect to the Project.



1A. Authority's Designated Agent. The Authority has appointed GPM Municipal Advisors, LLC as its representative under the AMA (the "Designated Agent"), who is empowered to act on behalf of the Authority to give or receive notices, give or withhold any consents or approvals, and to impose conditions upon any such consent or approval. Operator shall be entitled to rely on any written consents or written approvals given by an authorized representative of the Designated Agent. If the Authority revokes the designation of the Designated Agent and appoints a new Designated Agent at any time, the Operator shall be entitled to rely on written consents or written approvals given by an authorized representative of the previously-appointed Designated Agent until Operator has received actual notice from the Authority of such revocation and appointment.

Section 2. Description of Project. The facility to be operated by Operator under this Operating Agreement (the "Project") is an approximately 312-bed student housing facility, including the buildings, furniture, fixtures, machinery, and equipment therefor and related facilities being developed pursuant to the Development Agreement, located on the campus of the College in the City of Henderson, Clark County, Nevada, as more specifically described in the Ground Lease.

Section 3. Management of Project. Operator shall use commercially reasonable, good faith efforts to manage the Project in accordance with Company's responsibilities as set forth below:

(a) the following provisions of the Ground Sublease, the Indenture, the Leasehold Mortgage and the Tax Agreement:

- (i) Sections \_\_\_\_\_ of the Ground Sublease;
- (ii) Sections \_\_\_\_\_ of the Indenture;
- (iii) Sections \_\_\_\_\_ of the Leasehold Mortgage;
- (iv) Sections \_\_\_\_\_ of the Tax Agreement;
- (v) the AMA;
- (vi) the Resident Leases; and
- (vii) Applicable Law.

(b) To the extent not inconsistent with the provisions described in subsection (a) above, Operator shall use commercially reasonable, good faith efforts to manage the Project consistent with: (i) the responsibilities referenced on Exhibit A hereto, (ii) College policies, procedures, rules and regulations described in Section 3(g)(5) hereof and (iii) all policies and operating procedures governing residents of the Project (collectively the "Management Responsibilities"). In fulfilling its duties and obligations under this Operating Agreement, Operator shall do all things necessary, desirable or appropriate therefor or customarily performed by management agents of properties similar to the Project. Operator further agrees not to knowingly take any action or fail to take any action which it is specifically obligated to take hereunder that would cause Company to be in breach of any of the representations or covenants made by Company in the AMA. In furtherance thereof, Operator will employ an adequate staff to lease, operate, maintain, collect rent and make the appropriate disbursements for the Project, and will have full authority and complete supervision over the employment, discharge and performance of duties of all personnel used in the management, maintenance, operation, repair, and renting of the Project. Without limiting the generality of the

foregoing, the Management Responsibilities under this Operating Agreement shall include the following:

(i) Activities Prior to Substantial Completion. Prior to the substantial completion of the Project, Operator will provide and supervise the marketing activities for the Project and attempt to secure rentals for the Project.

(ii) Marketing Activities following Substantial Completion. Annually on or before December 1 prior to each Annual Period commencing with the second Annual Period (on or before September 1, 2018 with respect to the first partial Annual Period), Operator shall submit to Company for approval (with a copy to the College and Authority) a plan for the advertising and other marketing efforts for the Project detailing, among other things, the timing, cost and media type to be utilized (the "Marketing Plan"). Company will review the proposed Marketing Plan and will consult with Operator prior to the commencement of the forthcoming Annual Period in order to agree on an approved Marketing Plan (as the same may from time to time be amended and approved by Company the "Approved Marketing Plan"). If the Company gives notice of its disapproval, Operator and the Company promptly, in good faith, shall develop a Marketing Plan on which they agree. If Company and Operator fail to reach agreement not later than sixty (60) days following receipt thereof, the Marketing Plan for the then-current Annual Period shall be implemented for the next Annual Period until agreement is reached on a new Marketing Plan.

(iii) Rentals. Operator will provide and supervise the on-site staff in the renting of the dwelling units to Eligible Tenants. Incident thereto, the following provisions will apply:

- (1) Operator will coordinate the initial rent-up with Company;
- (2) Operator will be responsible for taking and timely processing applications for rentals.
- (3) Operator will prepare all Resident Leases for the Project in a form mutually agreeable to both Operator and Company, subject to approval of the Authority of such form and (including approval of any modifications, amendments or deviations from such form either generally or on an ad hoc basis) and will cause such Resident Leases to be executed by the students. The rental amounts under the Resident Leases will be in conformity with the schedule of specific and mandatory rental amounts established by the approved Annual Budget.
- (4) Operator shall market and lease the Project's dwelling units on a basis consistent with the Approved Marketing Plan.
- (5) Operator will be responsible for the collection, deposit and disbursement of advance reservation deposits and security deposits, if required, in accordance with the terms of each Resident Lease, the Management Responsibilities and the laws of the State applicable to such deposits. All such deposits ("Security Deposits") shall be held in a separate Security Deposit account. All funds in such accounts

shall at all times be the exclusive property of the Authority, or, to the extent provided by Applicable Law, the respective tenants of the Project, and shall not be commingled with any funds of Operator. All such deposits shall be in federally insured institutions and fully insured therein. Operator shall notify Company, Authority and the Trustee of the name, account number and location of the account in which Security Deposits are being held. Operator shall promptly notify Company, the Authority, and the Trustee of any material damage to a dwelling unit caused by or otherwise attributable to the occupant of such dwelling unit, and shall promptly transfer any forfeited security deposit amounts to the Trustee pursuant to the Bond Documents for application in accordance with the Indenture. To the extent required under any Resident Lease, Operator is authorized to return to the tenant thereunder the applicable Security Deposit, or such portion thereof as is then being held by Operator.

- (6) Operator will establish rents for the Project from time to time, subject to approval by the Authority, in accordance with the requirements of Section 12.5 of the Ground Sublease and Section \_\_\_ of the Indenture and the College if required under Section \_\_ of the Ground Lease. In order to facilitate the establishment of rents, Operator shall furnish to Company, the Authority and the College annually on or before December 1 prior to each Annual Period commencing with the second Annual Period (on or before September 1, 2018 with respect to the first partial Annual Period), and at such other times as may be reasonably requested by Company, the Authority or the College, a proposed schedule of rents, which proposal shall be accompanied by an analysis demonstrating that the proposed rents will be sufficient to satisfy the requirements of Section \_\_\_ of the Indenture and consistent with the Annual Budget.
- (7) Operator will use its commercially reasonable efforts to timely collect all rents, charges and other amounts receivable in connection with the management and operation of the Project. Operator shall undertake to collect such amounts in a commercially reasonable manner consistent with the Management Responsibilities. All rents, charges, and other income from the Project shall be the property of the Authority. Until transferred to the Trustee as provided herein, such amounts will be received and held by Operator in trust for the Authority in a segregated account and will not be commingled with any funds of Operator or any other person or entity. Such amounts will be deposited by Operator with the Trustee not less frequently than daily pursuant to Section \_\_\_ of the Indenture.

(c) Enforcement of Resident Leases. Operator will use commercially reasonable efforts to secure full compliance by each tenant with the terms of such tenant's Resident Lease, including, but not limited to, the use of on-site personnel. Operator will enforce compliance by each tenant in a commercially reasonable manner.

(d) Maintenance and Repair. Operator will use commercially reasonable efforts to cause the Project to be maintained in good repair, including but not limited to, cleaning, painting, decorating, plumbing, carpentry, HVAC, grounds care and such other maintenance and repair work as may be reasonably necessary, in compliance with the requirements of Section \_\_\_\_\_ of the Ground Sublease, Section \_\_\_\_\_ of the Indenture and Section \_\_\_\_\_ of the Leasehold Mortgage, subject to receipt of adequate funds from the Trustee as set forth in the Annual Budget, all of which shall be paid by Operator out of the Operating Account as an Expense of the Project. Operator shall use commercially reasonable efforts to ensure that the actual costs of maintaining and operating the Project shall not exceed the Annual Budget, and year-to-date budget variances in excess of five percent (5%) will be explained to Company each month. Except as otherwise set forth herein, any expenditure from the Operating Account which exceeds by more than five percent (5%) in any major expense category (or an aggregate amount of \$15,000.00 in any major expense category for any Annual Period) the amount for such expenditure set forth in the Annual Budget shall require the approval of Company and the Authority, which approval shall not be unreasonably withheld, and which approval shall be deemed to have been given if Company and the Authority does not specifically deny such approval within ten (10) days after such approval is requested by the Operator. Notwithstanding the foregoing, any Material Contract entered into by Operator shall contain all of the provisions set forth in Section 9(c) below. In cases of emergency, Operator may make expenditures for repairs or replacements in conformance with the aforementioned spending limit without prior approval, if it is necessary, in the reasonable judgment of Operator, to prevent imminent damage to property or injury to persons. Operator will promptly notify Company and the Authority of any such emergency expenditure no later than three (3) business days following such emergency repair or replacement, describing the cause of such emergency, the repairs or replacements undertaken in connection with such emergency, and the cost of such emergency repairs or replacements. Incident thereto (but only to the extent authorized by the Annual Budget), the following provisions will apply:

(i) Reasonable and customary attention will be given to preventive maintenance in accordance with Management Responsibilities.

(ii) If Operator determines it to be necessary, Operator will hire qualified independent contractors for the maintenance and repair of heating and air-conditioning systems, and for other repairs beyond the capability of its regular maintenance employees.

(iii) Operator will systematically and promptly receive and investigate all legitimate service requests from tenants and take such action thereon as may be justified. Unresolved material complaints will be reported to Company after investigation.

(iv) Operator will acquire all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the Project.

(e) Capital Improvements.

(i) Operator shall from time to time plan and carry out necessary capital improvements following the completion of the Project, with the prior approval of Company and the Authority, in accordance with the then-applicable approved Annual Budget. The cost of any such capital improvements shall be paid with funds from the Repair and Replacement Fund provided for in the Indenture.

(ii) Operator shall provide Company and the Designated Agent with advance written notification (hereinafter, "Work Notification") of any proposed capital improvement work to be performed in excess of \$10,000. The Work Notification shall be provided as far in advance of the work as possible and shall consist of a general description of the work, required building materials, when it will occur, its location by building and room, and identification of the building and rooms which the work may contact or disturb. Operator shall also provide to Company [and the Authority] any other information they may reasonably request with regard to the Work Notification or the work described therein.

(iii) Operator acknowledges that capital improvements shall be planned and carried out in compliance with Sections \_\_\_\_\_ of the Ground Sublease, Sections \_\_\_\_\_ of the Indenture and Section \_\_\_\_\_ of the Leasehold Mortgage, and Operator agrees to use its commercially reasonable efforts to make capital improvements to the Project in accordance with such provisions in a manner that minimizes to the extent practicable any disruption to or interference with the use of the Project or the habitability of any of its dwelling units. Operator shall be responsible for obtaining all governmental consents and approvals relating to capital improvements and for ensuring that any and all required third party consents and approvals required by the sections referenced hereinabove are obtained before proceeding with any such capital improvements.

(iv) Any expenditure from the Repair and Replacement Fund for maintenance and repair of the Project will conform to the requirements of the Indenture and the Ground Sublease.

(f) Utilities and Services. Operator will make timely arrangements for water, electricity, telephone, cable television, broadband, natural gas, sewage, garbage collection services, trash disposal, landscape maintenance and vermin extermination services to the Project. Operator is authorized to make such contracts as may be necessary to secure such utilities and services. The expenses incurred for such utilities and services that are not directly billed to the tenants by or on behalf of the applicable utility company shall be paid by Operator out of the Operating Account as an Expense of the Project.

(g) Personnel. All on-site personnel will be employees or contracted employees of Operator that in the reasonable judgment of Operator are qualified to perform the respective tasks and responsibilities assigned to them. Operator will select, hire, pay, supervise and discharge such personnel, subject to the following conditions:

(i) Operator will coordinate employment activities and personnel in the interest of good overall management. College shall have the right to require that Operator address to College's reasonable satisfaction any reasonable complaints by College as to the qualifications and performance of Operator's General Manager, Assistant General Manager and Maintenance Supervisor (the "Key Personnel") working in connection with the Project if College reasonably determines that such action is in the best interest of the good overall management of the Project, subject to the following conditions:

(1) Pursuant to the Ground Lease, College has agreed that it must notify Company and Operator in writing if College has a complaint with respect to any Key Personnel employed by Operator, which notice shall specify the basis for College's dissatisfaction with the

qualifications or performance of such individual who is part of Key Personnel (the "Complaint Notice").

- (2) If Operator disagrees with the substance of the Complaint Notice, Operator shall notify Company and College in writing of Operator's objection, which notice shall specify the reasons for Operator's objection (the "Objection Notice"), within ten (10) days after receipt of the Complaint Notice.
- (3) If Operator delivers an Objection Notice to Company and College within such ten (10) day period, representatives of Operator, Company and College shall, as soon as is reasonably practicable following the receipt by Company and College of the Objection Notice, confer in good faith in an attempt to resolve the dissatisfaction of College with the qualifications or performance of such individual who is part of Key Personnel and Operator's objections set forth in its Objection Notice.
- (4) If either (A) Operator fails to deliver an Objection Notice within ten (10) days after receipt of a Complaint Notice or (B) the good faith conferral described in clause (3) above does not produce agreement among the parties as to a course of action, then Operator shall, as soon as is reasonably practicable thereafter, but subject in all events to compliance with applicable legal requirements, (i) engage a replacement for the applicable individual who is part of Key Personnel in accordance with applicable legal requirements and the terms and conditions of this Operating Agreement, (ii) with College's consent, not to be unreasonably withheld, assign such individual who is part of Key Personnel to different duties in connection with the Project, and/or (iii) relieve such individual who is part of Key Personnel of such duty or duties that are the subject of the Complaint Notice.

(ii) The compensation, including fringe benefits, of all personnel performing on-site functions will be determined by Operator. Compensation of bookkeeping, clerical, and other managerial personnel will be within Operator's sole discretion. The compensation, including regular, overtime and holiday pay, incentive bonuses and annual leave time, payroll taxes and fringe benefits, including life and medical insurance, social security, medicare, state and federal unemployment taxes, workers' compensation insurance, administrative costs and pre-employment testing and screening, of all personnel expected to perform on-site functions will be paid as an Expense of the Project in accordance with and subject to the Annual Budget.

(iii) The rental value of any dwelling unit furnished rent-free to a resident of the Project will be treated as a cost of the Project. No dwelling unit will be furnished rent-free to a resident of the Project without the prior approval of Company, Authority and the College.

(iv) Operator shall be an equal opportunity employer and shall conform to all applicable federal and state laws regarding employment. Operator shall not engage in or

permit discrimination against any person or groups of persons on the grounds of race, color, handicap, religion, national origin, age, or sex in any manner prohibited by the laws of the United States or the State.

(v) Operator will strictly adhere, and will use its commercially reasonable efforts to cause its employees to adhere, to this Operating Agreement and to the policies, procedures, and regulations of the College (including but not limited to parking, smoking, security and drug and alcohol policies) set forth in the Student Handbook and the *Student Code of Conduct*, as amended and supplemented from time to time and with respect to which Operator has actual notice, and all policies and operating procedures governing residents of the Project while on the College's campus.

(vi) It is understood and agreed that all Project employees may not devote one hundred percent (100%) of their respective time to the operation of the Project, and Operator shall be responsible to ensure that such Project employees shall be deemed to be Project employees only to the extent of their respective time devoted to the Project, and will ensure that the salary and fringe benefits of such Project employees will be commensurately prorated.

(h) Records and Reports.

(i) Operator shall maintain, at Operator's offices in Austin, Texas, accurate books and records with respect to the Project. Subject to Applicable Law, including the Family Educational Records and Privacy Act, the Company, the Authority, the College, or the Trustee shall have the right during Operator's normal business hours to examine, audit and, if the Company, the Authority, the College or the Trustee deems necessary, copy Operator's books and records pertaining to the Project and to make transcripts thereof. Operator shall keep all books and records pertaining to the Project, including all supporting vouchers, for a period of at least six (6) years.

(ii) Operator will provide to Company, the Authority, and the College a rent roll for the Project at the beginning of each semester, or if unavailable at the beginning of each semester, within thirty (30) days of the beginning of each semester and monthly thereafter.

(iii) Not later than one hundred twenty (120) days following the end of each Annual Period beginning with the Annual Period ending June 30, 2020, Operator shall, using private auditors selected by Company, subject to the Authority's approval, furnish to Company, the Authority, the College and the Trustee audited financial statements with respect to the Project for such fiscal year in a form, and with a level of detail, reasonably satisfactory to Company, the Authority, the College and the Trustee. All costs associated with such audits shall be paid as an Expense of the Project.

(iv) Not later than forty-five (45) days following each October 1, January 1, April 1, and July 1 of an Annual Period beginning with the Annual Period ending June 30, 2020, Operator shall furnish to Company and the Authority a financial report, signed by an authorized officer of Operator, that includes supporting calculations, a calculation of the Fixed Charges Coverage Ratio, and states whether, to Operator's actual knowledge, any event of default under the Indenture has occurred and is continuing as of the date of such certificate, or would occur but for the giving of notice and passage of time.

(i) In addition to the foregoing, Operator will timely provide to Company and the Authority such other information with respect to the Project and its operations as set forth on Exhibit B hereto as well as such other information relating to the operation of the Project as Company or the Authority may reasonably request in order to comply with their respective obligations under the Bond Documents. Operator shall also cooperate with Company, the Authority and the College in connection with any investigations, inspections, studies or reports reasonably required by the College or by Applicable Law, including Title IX investigations and criminal investigations.

(j) Annual Budget.

(i) In compliance with the provisions of Section \_\_\_\_\_ of the Ground Sublease and Section \_\_\_\_\_ of the Indenture, and subject in all respects to the requirements and provisions of such sections, Operator shall develop in good faith a line-item operation and capital budget for the Project for each Annual Period (collectively, the “Annual Budgets” and each, an “Annual Budget”). The Annual Budget shall set forth among other matters, usually contained in budgets of similar nature:

- (1) the categories of anticipated Revenues relating to the Project and the projected amounts of each category of such Revenues;
- (2) all anticipated capital expenditures to be paid out of the Repair and Replacement Fund provided for in the Indenture;
- (3) the projected reasonable amounts of all Expenses and Subordinated Expenses of the Project;
- (4) the schedule of specific and mandatory rental amounts to be paid pursuant to the Resident Leases which will be calculated to provide Revenue Available for Fixed Charges sufficient to produce a Fixed Charges Coverage Ratio as required by Section \_\_\_ of the Indenture;
- (5) a schedule showing any planned disposition of any assets that are part of the Project;
- (6) the anticipated rent levels; and
- (7) sufficient information to explain the basis for the budgeted Revenues, capital expenditures and Expenses and Subordinated Expenses of the Project.

(ii) In the first Annual Period, Operator shall submit a partial year budget to Company and the Authority for Company and Authority review and approval no later than sixty (60) days prior to the first expected day of occupancy. Commencing with the second Annual Period and for each Annual Period thereafter, Operator shall submit the proposed Annual Budget to Company and the Authority for Company’s and the Authority’s review and approval, not later than ten (10) days prior to the commencement of each Annual Period. Company and the Authority shall give Operator notice of its approval of the Annual Budget as submitted or of its disapproval of one or more of the matters contained therein not later than the commencement of such Annual Period . If Company or the Authority gives notice



of its disapproval, Operator, Company, and the Authority, promptly, in good faith, shall develop an Annual Budget on which they may agree. If Operator, Company, and the Authority, fail to reach agreement prior to the commencement of an Annual Period, the Annual Budget for the then current Annual Period, as increased by a factor equal to the Consumer Price Index Increase, shall be implemented for the next Annual Period until agreement is reached on a new Annual Budget. The Authority and the Company shall be deemed to approve the foregoing matters if they fail to disapprove such submission within ten (10) days of the submission by the Operator to the Authority and the Company of such matters.

(iii) From time to time during or with respect to an Annual Period, and except for any dispositions of property which must in each instance be approved by Company and the Authority, Operator shall have the right to modify the Annual Budget, which modification shall be subject to Company's and the Authority's approval unless: (1) the modification is made to reflect additional Revenues or the receipt of insurance or condemnation proceeds; (2) the modification shall be for an amount in respect to a line item (a) that does not increase or decrease, when netted against to all other changes to that line item, either the original amount of that line item or an increased amount approved by Company and the Authority and then in effect by more than ten percent (10%), or (b) the modification shall be necessary to prevent or reduce the risk of death or injury to any person or material damage to property. Operator shall promptly notify the College and the Authority of any modification made without their approvals pursuant to this Section 3(j)(iii). An Annual Budget for an Annual Period, as so amended, shall, after such amendment, be the Annual Budget for such Annual Period.

(iv) Operator shall operate the Project and make expenditures in connection with the Project in accordance with the Annual Budget.

(v) For each month within an Annual Period, Operator shall submit to Company and the Authority not later than forty-five (45) days after the end of such month, a Budget Reconciliation Statement.

(vi) The parties acknowledge and agree that except for the payment of expenses included as part of the Annual Budget solely from the sources provided therefor under the Indenture, the Authority and the Company shall not have any legal or financial responsibilities, shall not be consulted and shall exercise no discretion or authority with respect to any employees or contractors of Operator or with respect to any employees of a contractor with respect to the Project.

(k) Specific Management Practices. Operator will execute its duties hereunder in a manner consistent with good management practices, but subject in all events to the terms of this Operating Agreement.

(l) Recommendations of the Authority's Financial Consultant. If the Authority shall be required to retain a financial consultant pursuant to Section \_\_\_\_\_ and \_\_\_\_\_ of the Indenture, then, notwithstanding any other provision of this Operating Agreement, Operator shall promptly, and to the full extent required under the Indenture, implement and follow such recommendations regarding the Project as may be appropriate to achieve compliance in a manner approved by the Authority, such

approval not to be unreasonably withheld, including but not limited to recommendations regarding Project operations and the establishment of Project rents.

(m) Availability of Funds. Notwithstanding anything set forth herein to the contrary, nothing herein shall obligate Operator to expend resources or perform any duties and obligations requiring resources beyond those made available by Authority under the Bond Documents and the Annual Budget or take any action requiring the approval of Company, the Authority or the College without such approval, and the duties and obligations of Operator under this Operating Agreement shall be expressly limited thereby. Operator shall have no duty or obligation to pay or fund any sums hereunder from Operator's own funds.

(n) Approval of Board and College. Notwithstanding anything set forth herein to the contrary, to the extent that any action required to be taken by Operator under this Operating Agreement requires the approval of the Board and/or College as set forth in this Operating Agreement, Company shall use its commercially reasonable efforts to assist Operator in obtaining such approval provided however that in no event shall Operator be permitted or obligated to proceed with such action until such approval has been obtained. To the extent that Company is required to consult with the Board and/or College prior to Company approving any action to be taken by Operator, responsibility for such consultation shall belong solely to Company.

#### Section 4. Payment of Costs of Operating the Project.

(a) Disbursements to and from Operating Account. Operator shall establish and maintain an account separate from any other account of the Operator designated as "State Campus Village Project Operating Account" (the "Operating Account") for the payment of the costs of operating, managing, monitoring and repairing the Project, all of which shall be deemed to be Expenses or Subordinated Expenses of the Project except as otherwise provided herein. Operator shall timely pay all such Expenses of the Project out of funds deposited by the Trustee in the Operating Account unless previously paid by the Trustee.

(b) Administrative and Supervisory. All off-site administrative and supervisory salaries and expenses will be borne by Operator out of its own funds and will not be treated as Expenses of the Project.

#### (c) Management and Overhead.

(i) Management and general overhead expenses of Operator will be borne by Operator out of its own funds and will not be treated as Expenses of the Project, including, but not be limited to: (1) compensation of central office or off-site personnel employed or contracted by Operator, (2) rent for off-site offices utilized by Operator, (3) telephone (other than long-distance telephone charges incurred in managing and leasing the Project) and utility charges incurred at such offices, (4) office supplies, (5) rent for and repair and maintenance of office machines used at such offices, (6) postage used at such offices; and (7) any rental for or allocation of depreciation or amortization of any non-Project properties owned by or leased by Operator and used in the performance of its duties hereunder.

Section 5. On-Site Management Facilities. Operator (at its discretion) may maintain a rental and leasing office for the Project at the Project at a location approved by Company and Authority and will make no rental charge for the same.

Section 6. Insurance. Operator and the Company will cooperate to obtain the insurance coverage types and coverage limits set forth in the Master Insurance Schedule attached to the Indenture.

Section 7. Operator's Compensation. Operator shall be compensated for its services under this Operating Agreement as provided in Exhibit C attached hereto. To the extent that funds are not available for payment of the Management Fee in accordance with the terms hereunder and under the Indenture, the Management Fee shall remain due and owing to Operator and the due but unpaid Management Fee shall bear interest at a rate of [6]%, compounded annually (collectively, the "Unpaid Management Fee"). Interest shall be payable annually in arrears on each January 1, but only from amounts available in the O&M Fund in accordance with the payment provisions of the Indenture. Any Unpaid Management Fee (including accrued interest) shall be paid to Operator no later than the fifth (5th) anniversary of the date originally due from the O&M Fund to the extent and in the manner specified in the Indenture.

Section 8. Compliance with Laws. Operator shall perform all of Operator's services under this Operating Agreement in compliance with Applicable Law. Operator shall not be liable for violations of Applicable Law except to the extent that the same arises out of or relates to Operator's negligence or willful misconduct or its failure to comply with the terms of this Operating Agreement; provided, however, that Operator shall (i) exercise its commercially reasonable efforts to comply with Applicable Law, the cost of such compliance to be paid as an Expense of the Project and (ii) promptly notify Company and Authority of violations or hazards discovered by Operator. Operator shall not be obligated to initiate a process of discovery requiring environmental testing or inspections not normally performed in the routine operation of the Project, unless specifically requested to do so by Company and Authority in writing and paid for in accordance with an approved Annual Budget.

Section 9. Limitations on Operator's Actions and Authority. Operator shall not be liable for any obligation or expenditure incurred on behalf of the Project, the Authority, or Company if such obligation is incurred by Operator within the scope of Operator's authority or pursuant to the Annual Budget (as the same may from time to time be amended and approved by Company and the Authority). In contracting for services and products in accordance with the terms of this Operating Agreement, Operator shall be acting solely as Company's agent, and, subject to Section 18 hereof, Company agrees to indemnify, defend, protect and hold Operator, its principals, agents and employees, harmless from and against all claims asserted and losses sustained by reason of the performance in good faith of Operator's duties hereunder; provided, however, that nothing contained herein shall require Company or the Authority to indemnify such parties for any liability arising from the negligence, willful misconduct, malfeasance or fraud of any of such parties or the breach by Operator of the terms and conditions of this Operating Agreement for which Operator hereby agrees to indemnify, defend, and save the Authority, the Authority Indemnified Persons (as identified in the Indenture) and Company, its principals, members, agents and employees harmless from any loss, damages, liability, cost or expense (including reasonable attorneys' fees and court costs) which any of them may incur on account thereof. In connection with activities that are expressly authorized hereunder, Operator may advise any contracting party with whom it deals that Operator is acting as Company's agent, and that neither Operator nor the Authority shall have any liability for the obligation or expenditure, and may exact a commitment from the contracting party to look only to the Project for payment. Operator shall not be obligated to advance any sum of money for Company or the Project, or lend its credit for the benefit of the Project. Notwithstanding the authority granted to Operator in the other provisions of this Operating Agreement, Operator shall not do any of the following without the prior written consent of Company and the Authority in each instance:

(a) Enter into any contract that is not cancelable by Company or Operator on thirty (30) days' notice, without penalty;

(b) Enter into any contract if the fees, charges or other compensation or remuneration payable to the contractor under such contract is (i) unreasonably excessive for the products or services or other consideration provided by the contractor under such contract; or (ii) based directly or indirectly on the net profits or net losses of the Project unless, in either case, the Authority and the Company have been furnished with an unqualified opinion of nationally recognized bond counsel acceptable to the Authority that such contract will not adversely affect the exclusion from gross income of interest on the Bonds under Section 103 of the Code.

(c) Enter into any contract or group or series of related contracts, which, in the aggregate, call for total payments in excess of \$25,000, exclusive of contracts or agreements to provide utility services ("Material Contract") unless such Material Contract shall:

(i) expressly require that the contractor perform its operational services under such contract in accordance with the terms of this Operating Agreement, to the extent applicable;

(ii) include a waiver of all rights that the contracting parties may have against the Company and the Authority and any Authority Indemnified Person for any bodily injury, death or loss or damage to property;

(iii) contain an indemnification provision and limitation on liability provision in favor of the Authority and each Authority Indemnified Person at least as favorable to the Authority Indemnified Person as those indemnities and limitation on liabilities set forth in herein in Section 18;

(iv) not contain any provision that is materially inconsistent with the provisions of the AMA;

(v) provide that:

(1) the applicable subcontractor shall have sole responsibility for all other obligations to or for its Project employees arising from or connected with employment, including but not limited to, paying any and all salary, wages, commissions, fringe benefits and other remuneration, for paying any and all Social Security taxes, state and federal unemployment taxes, employment taxes and all other taxes and governmental assessments, and for paying all workers' compensation insurance and benefits;

(2) each employer at the Project shall assume the responsibility for timely compliance with all Applicable Law regarding its employees. Operator shall fully and completely indemnify and hold the Authority harmless as provided in Section 18 hereof, but without regard to any fault or negligence of Operator, for any Employment-Related Liabilities (as hereinafter defined) whether arising under this Operating Agreement or any contract entered into by Operator;

- (3) except for its payment of expenses included as part of the approved Annual Budget solely from the sources provided therefor under the Indenture, the Authority shall not have any legal or financial responsibilities, shall not be consulted and shall exercise no discretion or authority with respect to any employees or contractors of Operator or with respect to any employees of a contractor with respect to the Project; and
- (4) contain the following provision: PERSONS EMPLOYED, RETAINED OR ENGAGED BY [NAME OF CONTRACTOR OR ANY PERMITTED SUBCONTRACTOR OF SUCH CONTRACTOR] TO CONDUCT SERVICES AT THE PROJECT SHALL IN EVERY INSTANCE BE EMPLOYEES OF [NAME OF CONTRACTOR OR ANY PERMITTED SUBCONTRACTOR OF SUCH CONTRACTOR] AND UNDER NO CIRCUMSTANCES SHALL ANY INDIVIDUAL EMPLOYED AT ANY TIME OR IN ANY CAPACITY IN RESPECT OF THE PROJECT, THE CONDUCT OF BUSINESS AND OPERATIONS OF THE PROJECT, OR ANY MAINTENANCE OR OPERATION THEREOF BE CONSIDERED EMPLOYEES OF AMERICAN PUBLIC DEVELOPMENT, LLC, THE AUTHORITY, OR THE TRUSTEE FOR ANY PURPOSE WHATSOEVER.

(vi) The Company and the Authority may, in their discretion, impose conditions to the approval of any Material Contract, including (but not limited to) requiring that:

- (1) the contract be for a term of less than twelve (12) months and terminable on not more than thirty (30) days' notice;
- (2) the contract require that all contractors providing services to provide evidence of insurance as is usual and customary for contracts of the type or as requested by the Designated Agent;
- (3) Company and the Authority are furnished with an unqualified opinion of nationally recognized bond counsel acceptable to the Authority that such contract will not adversely affect the exclusion from gross income of interest on the Bonds under Section 103 of the Code.

(d) Institute any legal action in the name of the Authority, except that the foregoing shall not prohibit Operator from instituting an eviction action provided that it provides notice to the Company and the Authority at least fifteen (15) days prior to the commencement of such action and gives the Company and the Authority reasonable opportunity to object;

(e) Expend or commit any funds other than as allowed hereunder or otherwise approved by Company;

(f) Execute any deed, note, mortgage or security agreement binding on Company or the Project;

(g) Commit or allow any act or omission, which results in the creation or perfection of any lien or encumbrance on the Project;

(h) Incur costs or expenses in excess of or not contemplated by the then-applicable Annual Budget, except as set forth in Section 3(e) hereof or as otherwise directed by Company and the Authority;

(i) Commit any act or omit to take any act required to be taken by Operator hereunder that would result in a default under the Ground Sublease, the Indenture, Leasehold Mortgage or adversely affect the exemption from federal income tax of interest payable with respect to the Bonds;

(j) Enter into any Resident Leases or other contracts that would impose upon the Authority for any liability beyond its interest in the Project; or

(k) Enter into any Resident Leases with any person who is not an Eligible Tenant.

Section 10. Assignment. Except as otherwise provided in the Indenture, neither Company nor Operator shall have any right to transfer, assign, pledge, or hypothecate any of their respective rights, duties or obligations under this Operating Agreement without the prior written consent of the other party and the Authority, which consent shall not be unreasonably withheld, and any attempt to do any of the foregoing shall be null and void and of no force or effect. Notwithstanding the foregoing, Operator hereby acknowledges and consents to any assignment or pledge of this Operating Agreement by Company to the Trustee or otherwise in connection with the issuance of the Bonds, and to any assignment or transfer made in connection with any assignment or other transfer of the Authority's interest under the Ground Sublease. Operator and Company recognize the Trustee, the Authority and the Authority Indemnified Persons as third-party beneficiaries of this Operating Agreement.

Section 11. Term of Agreement; End of Term.

(a) This Operating Agreement shall be in effect for a period (the "Primary Term") beginning [August 1], 2019 (the "Commencement Date"), and ending five (5) years after the Commencement Date, unless otherwise terminated in accordance with the provisions of this Operating Agreement, and continuing thereafter for successive one (1) year terms, unless on or before one hundred and twenty (120) days prior to the expiration of any such period or any extension thereof, either Company or Operator shall notify the other in writing that it elects to terminate this Operating Agreement, in which case this Operating Agreement shall be thereby terminated on the last day of such period. The parties agree that each of Company and Operator may have obligations under this Operating Agreement which are required to be performed prior to the commencement of the Primary Term. Upon expiration or termination of this Operating Agreement for any reason, Company promptly shall give written notice of such expiration or termination to Trustee and the Authority Operator shall cause all funds held by Operator relating to the Project, including, but not limited to, the Security Deposits, to be delivered to the Trustee, Operator shall deliver to the Trustee copies of all records and documents in Operator's possession or control relating to the Project including, without limitation, all accounting data and records, rent rolls, originals and copies of all housing leases, service contracts and agreements, and technical data with respect to operation and maintenance of the various systems at the Project, and Operator shall be paid all fees and reimbursements then due and payable and accrued through the date of termination. Operator's and Company's obligations under this paragraph shall survive the termination or expiration of this

Operating Agreement. Notwithstanding the foregoing, this Operating Agreement shall not extend beyond the term or early termination of the AMA.

(b) Notwithstanding the foregoing, this Operating Agreement is subject to termination in accordance with the following conditions, which in each and every case shall be subject to the Authority's approval and such other and further terms and conditions as are prescribed by the AMA with respect to termination of this Operating Agreement:

(i) This Operating Agreement may be terminated by the mutual consent of Company and Operator as of the end of any calendar month.

(ii) Except as hereinafter provided, in the event a petition in bankruptcy is filed by or against either of Company or Operator and such proceeding is not dismissed within ninety (90) days thereof, or in the event either makes an assignment generally for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Operating Agreement without notice to the other.

(iii) Either Company or Operator may terminate this Operating Agreement by written notice to the other party that the Operating Agreement shall terminate five (5) business days after the other party's receipt of such notice in the event there occurs an Event of Default by the other party under the terms of this Operating Agreement. The non-defaulting party shall also have the right to seek damages and exercise such other remedies as may be provided by law or in equity against the defaulting party.

(iv) Company may terminate this Operating Agreement, without cause or penalty, upon the third (3rd) anniversary of the Commencement Date by written notice to Operator on or before one hundred and twenty (120) days prior to the third (3rd) anniversary of the Commencement Date.

(v) This Operating Agreement shall automatically terminate when the AMA is terminated.

## Section 12. Events of Default; Remedies.

(a) The occurrence of any of the following shall constitute an "Event of Default" by the party failing to comply:

(i) Operator shall fail to comply with any of the material terms or conditions hereof relating to the collection, possession or remittance of rents or any other amounts payable to the Authority or to Operator on behalf of the Authority, which failure shall persist for ten (10) days after written notice thereof.

(ii) Company or Operator shall have failed to observe or perform any other material term or condition of this Operating Agreement which failure shall persist for thirty (30) days after written notice thereof; provided, that, if Company or Operator, as applicable, has initiated a cure and is pursuing such cure using commercially reasonable efforts and good faith, and such cure shall not be completed within thirty (30) days, then an Event of Default shall not have occurred until the expiration of ninety (90) days, in any event.

(iii) A petition in bankruptcy is filed by or against either Company or Operator and such proceeding is not dismissed within ninety (90) days thereof, or in the event either makes an assignment generally for the benefit of creditors or takes advantage of any insolvency act.

(b) Upon the occurrence of an Event of Default, the non-defaulting party may exercise one or more of the following remedies, after providing written notice to the other party, the Authority, the College and the Trustee:

(i) Subject to the provisions of Section 11(a) hereof, terminate this Operating Agreement by written notice stating a date certain upon which this Operating Agreement shall terminate, in which event this Operating Agreement shall expire and terminate upon such date as fully and completely as if such date were the stated expiration date of this Operating Agreement.

(ii) With or without terminating this Operating Agreement, bring an action for damages, specific performance and/or injunctive relief.

(iii) Such other rights or remedies as may be available hereunder, at law or in equity.

Section 13. Notices. All notices or approvals required to be given hereunder shall be in writing and delivered personally or be certified mail, return receipt requested, and addressed as follows:

If to Company: American Public Development, LLC  
2821 W. Horizon Ridge Parkway, Suite 120  
Henderson, Nevada 89052  
Telephone: (702) 227-7111  
Facsimile: (702) 227-7191

If to Operator: ACC SC Management LLC  
12700 Hill Country Boulevard  
Suite T-200  
Austin, Texas 78738  
Attention: General Counsel (URGENT)  
Fax: (512) 732-2450

With a Copy to: Glast, Phillips & Murray, P.C.  
14801 Quorum Drive, Suite 500  
Dallas, Texas 75254-1449  
Attention: Laura M. Keith  
Fax: (972) 419-8329

If to the College: Nevada State College  
1300 Nevada State Drive  
Henderson, Nevada 89002  
Attention: Vice President for Finance and  
Business Operations



Telephone: (702) 992-2000  
Facsimile: (702) 992-2351

If to the Trustee: (Insert Trustee Info)

If to the Authority: Public Finance Authority  
c/o GPM Municipal Advisor, LLC  
2999 Oak Road, Suite 710  
Walnut Creek, CA 94597  
Attention: Program Operator

If to the Designated Agent: GPM Municipal Advisors, LLC  
2999 Oak Road, Suite 710  
Walnut Creek, CA 94597  
Attention: Program Operator

Each mailed notice shall be deposited with the United States Postal Service, in registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner provided above. Each such notice shall be deemed to have been given to, or served upon, the party to whom delivered, upon delivery at the addresses provided above. Any party hereto may change its address for the service of notice hereunder by providing written notice of said change to the other parties hereunder, in the manner specified above, ten (10) days prior to the effective date of said change.

Section 14. Interpretive Provisions.

(a) This written Operating Agreement, attachments hereto, and other contracts or documents referenced herein constitute the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between Company and Operator with respect to the Project. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Operating Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by Company and Operator.

(b) This Operating Agreement has been executed in several counterparts, each of which constitute a complete original Operating Agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts. This Operating Agreement and any additional amendments to this Operating Agreement may be executed only by hand-signatures; however, such signatures may be transmitted by facsimile or email, and any such electronic transmissions of the signatures shall be deemed to constitute originals. In addition, either party may rely upon any electronic transmission of any document that is properly executed by the other party. The signature of any party thereon shall be considered for those purposes as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of any party, a facsimile or scanned email document shall be re-executed by all parties in original form. No party may raise the use of a facsimile machine or scanned email, or the fact that any signature was transmitted through the use of a facsimile or scanned email as a defense to the enforcement of this Operating Agreement.

(c) As used herein, whenever appropriate, the masculine gender shall be construed to mean the feminine or neuter gender, or both of them; the feminine gender shall be construed to mean

the masculine or neuter gender, or both of them, and the neuter gender shall be construed to mean the masculine or feminine gender, or both of them.

(d) As used herein, whenever expressed, the singular number shall be construed to mean the plural number and the plural number shall be construed to mean the singular number.

(e) As used herein, the words “include” and “including” shall be deemed to mean “including but not limited to.”

(f) The paragraph headings or captions appearing in this Operating Agreement are for convenience only, and are not to be considered in interpreting the Operating Agreement.

(g) All the terms, provisions, and conditions of this Operating Agreement shall be deemed to be severable in nature. If for any reason the provisions hereof are held to be invalid or unenforceable by a court of competent jurisdiction, then to the extent that such provisions are valid and enforceable, such court shall construe and interpret this Operating Agreement to provide for maximum validity and enforceability.

Section 15. Applicable Law. This Operating Agreement and all obligations hereunder shall be construed and interpreted under and in accordance with the laws of the State of Nevada, without reference to conflict of laws principles.

Section 16. Successors and Assigns. This Operating Agreement shall be binding upon the parties hereto, their successors and assigns. Any successor or assignee to the duties and obligations of Operator shall be reasonably acceptable to Company and the College, which acceptance must be evidenced in writing. Company and Operator acknowledge that the College and the Authority are intended third-party beneficiaries of this Operating Agreement.

Section 17. Limitation of Liability.

(a) Notwithstanding anything herein to the contrary, the liability of Company (including, but not limited to its indemnity obligations) under this Operating Agreement shall be “non-recourse” and, accordingly, Operator’s sole source of satisfaction of such obligations shall be limited to the rents, issues and surplus related thereto, and Operator shall not seek to obtain payment from any person or entity comprising Company or from any assets of Company other than those described herein, notwithstanding the survival of any obligation of Company beyond the term hereof.

(b) Except to the extent that the following arises out of or results from Operator’s negligence or willful misconduct or a breach by Operator of the terms and conditions of this Operating Agreement, Operator shall not be liable for (i) any negligence or intentional acts or omissions of Company, or any previous or subsequent owners or managers of the Project, or any agents or any previous or subsequent agents of either or (ii) any failure of, or default by, any tenant in the payment of any rent or other charges due the Authority or in the performance of any obligations owed by any tenant to the Authority or Company pursuant to any Resident Lease or otherwise. Operator assumes no responsibility or liability for the provision of security services or devices other than to supervise and to enforce on behalf of Company the obligations of the contractor(s) providing security services for the Project.

(c) Notwithstanding anything set forth or implied herein to the contrary, Operator agrees to look solely to Company for the duties, obligations, responsibilities and liabilities of Company hereunder and neither the constituent partners, members or managers of Company nor any partners, members, managers, shareholders, officers, directors, beneficiaries, trustees or employees of Company or the constituent partners, members or managers of Company shall be liable or responsible for any duty, obligation, responsibility or liability of Company hereunder. Notwithstanding anything set forth or implied herein to the contrary, Company agrees to look solely to Operator for the duties, obligations, responsibilities and liabilities of Operator hereunder and neither the constituent partners, members or managers of Operator nor any partners, members, managers, shareholders, officers, directors, beneficiaries, trustees or employees of Operator or the constituent partners, members or managers of Operator shall be liable or responsible for any duty, obligation, responsibility or liability of Operator hereunder.

(d) Notwithstanding anything herein to the contrary, each party hereto waives and releases all rights that it may have against the Authority and any Authority Indemnified Person (as defined in the Indenture) for any bodily injury, death or less or damage to the Project.

Section 18. Indemnification. It is Company's and Operator's intent to look initially to the insurance coverage required pursuant to Section \_\_ of the Ground Sublease for both legal defense and payment of any applicable claims, without regard to the following indemnities. Therefore, the parties agree that, notwithstanding any indemnity language to the contrary, in the event that a claim, liability, loss or expense arises which is covered by the insurance required pursuant to the Master Insurance Schedule, Company and Operator shall cause such insurance to be paid in accordance with such policies, and to the extent of such payment, the indemnities provided below shall not apply. To the extent insurance is not available, or any claim is not fully paid by applicable insurance, the parties agree that the following indemnities set forth below shall control. As to any claims paid by insurance, the parties agree to waive all rights of subrogation, provided that such waiver does not invalidate any insurance policy or materially adversely affect the premium rates for such insurance.

(a) Company shall indemnify, defend, protect and hold harmless the Authority, any Authority Indemnified Person, Operator and Operator's members, managers, officers, directors, shareholders, employees, partners, principals, attorneys and agents (collectively referred to as "Operator" for the purposes of this Section 18(a)), from and against any and all claims, proceedings, liabilities, losses, costs and expenses (including reasonable attorneys' fees and costs of defense) incurred by or asserted against the Authority, any Authority Indemnified Person, or Operator as a result of a breach by Company of its duties or obligations under this Operating Agreement or the gross negligence or willful misconduct of Company, in excess of the insurance coverage.

(b) Operator shall indemnify, defend, protect and hold harmless the Authority, any Indemnified Person, Company and Company's members, managers, officers, directors, shareholders, employees, partners, principals, attorneys and agents [collectively referred to as "Company" for the purposes of this Section 18(b)], from and against any and all claims, proceedings, liabilities, losses, costs and expenses (including reasonable attorneys' fees and costs of defense) incurred by or asserted against the Authority, any Indemnified Person, or Company, in excess of the insurance coverage required pursuant to the Master Insurance Schedule, as a result of any act or failure to act by Operator arising out of (i) the gross negligence, misconduct, malfeasance or fraud of Operator, (ii) the breach by Operator of any of the terms of this Operating Agreement or (iii) acts of Operator which are beyond the scope of Operator's authority hereunder and not otherwise approved by Company.

(c) Defined terms. The following definitions shall apply:

(i) **“Operator-Indemnified Liabilities”** means Liabilities arising from: (A) any acts or omissions of Operator, its agents, representatives, contractors or employees constituting negligence, willful misconduct, malice or fraud and/or criminal activity in connection with services of Operator, its agents, representatives, contractors (including, without limitation, any contractors or tenants) or employees arising out of or relating to the operation of the Project; (B) Employment-Related Liabilities; (C) any violation by Operator or its agents, representatives or employees of this Operating Agreement or of any Applicable Law; (D) any losses suffered as a result of theft, embezzlement, fraud or other dishonesty by Operator, its agents, representatives, contractors or employees; or (E) any claims against the Authority or any Authority Indemnified Person arising out of a Material Contract that for any reason does not satisfy the requirements of Section 10(c).

(ii) **“Employment-Related Liabilities”** means all Liabilities arising out of Operator’s or any other Person’s (including, without limitation, any contractor’s or tenant’s) labor and employment-related activities (such as, by way of illustration, screening, testing, investigating, interviewing, hiring, training, supervising, discharging, and paying all personnel necessary to maintain and operate the Project, employment discrimination, wage & hour disputes, civil rights, unfair labor practices, OSHA and ADA compliance. For avoidance of doubt, Employment-Related Liabilities shall constitute Operator-Indemnified Liabilities without regard to any fault, negligence, misconduct, action or inaction on the part of Operator or any other Person.

Section 19. Competitive Projects. Company acknowledges, agrees and understands that Operator and/or its affiliates may, individually or with others, engage in or possess an interest in any other projects and ventures of every nature and description, including, but not limited to, the ownership, financing, leasing, operation, management, brokerage, development and sale of real property and building projects other than the Project, provided such other ventures or projects are not competitive with the Project.

Section 20. Force Majeure. Operator shall not be liable or responsible for any delay or failure resulting from (and the times for performance by Operator hereunder shall be extended by the duration of) causes beyond the control of, and without the fault or negligence of, Operator, including without limitation acts of God, acts of the public enemy, acts of war or terrorism, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, severe or inclement weather beyond that usually encountered in the county in which the Project is located, shortages in labor or materials, or delays due to any such causes.

Section 21. Operator’s Materials Proprietary. Company acknowledges and understands that all market studies, competitive analyses, lease forms, management programs, LAMS system, leasing materials, logos, trademarks, marketing materials and brochures (collectively, the “Materials”) provided by Operator in connection with this Operating Agreement are proprietary to Operator or its affiliate and the property of Operator or its affiliate. Although Operator may use the Materials for purposes of the Project on a nonexclusive basis as herein specified, Company covenants and agrees that Company shall not use the Materials for any purpose whatsoever, except Company may use lease forms, leasing materials, marketing materials and brochures in connection with the Project. Company acknowledges and understands that, except as otherwise provided herein, Operator reserves and retains the right to use the Materials relative to other projects and

developments, and such right is not transferred or assigned by Operator to Company hereunder. The terms and provisions of this Section 21 shall survive any termination of this Operating Agreement and shall be binding upon Company and its successors, assigns, affiliates and parents and shall inure to the benefit of Operator and its successors, assigns, affiliates and parents.

Section 22. Condition of Project. Without in any way releasing Operator from its responsibility under Section 3 hereof for maintaining the Project in good repair, Company acknowledges that Operator is not a property inspector or engineer and is not qualified to inspect or make representations as to the physical or environmental condition of the Project. Accordingly, Company agrees that Operator, in fulfilling its obligation under this Operating Agreement to maintain the Project in good repair may, as a Project expense, from time to time as it deems necessary, obtain from a third-party inspector a property condition report relative to the Project, and in fulfilling its obligation under this Operating Agreement to maintain the Project in good repair or advising Company regarding the physical or environmental condition of the Property, Operator may rely upon such property condition report(s) for all matters relative to the physical or environmental condition of the Project.

Section 23. Qualified Management Agreement. To the extent that it deals with the management of Project assets, this Operating Agreement is intended to and shall constitute a “qualified management agreement” in compliance with applicable requirements of Section 141 of the Code and Rev. Proc. 2017-13, 2017-6 I.R.B. 787, and shall be interpreted in accordance with such requirements.

Section 24. Limited Liability of Authority. Notwithstanding anything to the contrary in this Operating Agreement or any other document or instrument to which the Authority is a party, whether express or by implication or construction or interpretation or otherwise, Operator acknowledges and agrees that he Authority shall not be liable or obligated in any manner under this Agreement or otherwise to pay or cause to be paid any fees, expenses or reimbursements or to make any other payments or advance funds under this Operating Agreement or otherwise, or incur or cause to be incurred any expense in pursuing any course of action, in connection with the Project or any other matter within the scope of or contemplated by this Operating Agreement or be liable (directly or indirectly) for any claims, proceedings, costs or expenses of any kind for any reason in connection with or in any way related to this Operating Agreement or any other document or instrument to which he Authority is a party related to the Project, its financing, development, operation, management or otherwise, except only to the extent that monies are held by the Trustee and available therefor as expressly set forth the Indenture, and provided, that the Authority shall not be required to incur any expense or liability in pursuing any claim against such monies for the benefit of Operator, Company or any other Person. Operator further acknowledges and agrees that it must adhere to the provisions of the Indenture in requesting disbursements from the funds and amounts held by the Trustee for payment of all of its costs, expenses, and compensation payable by the Authority hereunder out of the applicable Operating Account as Operating Expenses and out of the amounts paid to Operator as Budgeted Operating Expenses and to the extent that funds are available therefor under the priority of payments set forth in the Indenture. TO THE EXTENT THAT FUNDS OR PROPERTY ARE HELD BY THE TRUSTEE BUT NOT SUFFICIENT FOR SUCH PURPOSE, COMPANY WILL BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM THE AUTHORITY AND MAY BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM COMPANY OR FROM ANY OTHER PERSON.

IN WITNESS WHEREOF, Company and Operator by their duly authorized representatives have executed this Operating Agreement on the date first above written.

**COMPANY:**

**AMERICAN PUBLIC DEVELOPMENT, LLC**

By: \_\_\_\_\_  
Authorized Representative

By: \_\_\_\_\_  
Authorized Representative

IN WITNESS WHEREOF, Company and Operator by their duly authorized representatives have executed this Operating Agreement on the date first above written.

**OPERATOR:**

**ACC SC MANAGEMENT LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**RESPONSIBILITIES**

Subject to the terms and provisions of this Operating Agreement, Operator shall use commercially reasonable, good faith efforts to:

1. Design and implement a Residential Life and Housing Administration program, which embraces a respect for diversity, inclusion and equity.
2. Meet regularly with the College Chief Housing Officer to coordinate the services to be provided to the occupants and develop strong links to the academic programs, faculties and staffs of the College.
3. Provide a wide variety of learning centered programs based on the College programming model with College identified Student Learning Outcomes and designed to meet the needs of the various groups of occupants living at the Student Housing Facility.
4. Endeavor to create a culture that is welcoming, safe, participative and supportive of the occupants' academic goals.
5. Notify representatives of the College, as directed by the College, when an "incident" (as defined by written notification thereof to Operator from the College) occurs.
6. Hire, train and oversee applicable personnel in accordance with the staffing plan.
7. Hire, train and oversee all resident advisors ("RAs") consistent with commonly accepted housing standards. Ensure that resident advisors are trained in all applicable higher education related laws and regulations.
8. Hire, train and oversee administrative and other positions inside the Student Housing Facility in accordance with the staffing plan approved by Company.
9. Subject to the College's approval, develop and update as needed a Resident Handbook that includes, but is not limited to: an emergency response plan; job descriptions for personnel; procedures for contacting key offices of the College as defined by the College; procedures for handling emergencies; management firm policy and procedures; notification procedures; copies of student and staff model contracts; and programming guidelines and resource.
10. Develop and implement a training program for staff of the Student Housing Facility, which will meet or exceed the comprehensiveness of the training programs at similar institutions.
11. Provide reports as requested to the College regarding all programs, along with evaluations and recommendations for future programs.
12. Develop a communication plan, subject to the College's approval, for occupants and staff of the Student Housing Facility.



13. Anticipate whenever possible and respond effectively to student behavior issues, including issues of safety, security and the general welfare of all occupants.
14. Develop fair and consistent policies, rules and regulations governing behavior and activity in the Student Housing Facility, subject to the College's approval, for: the administration of the Resident Handbook in which such information is published; a means by which violations thereof will be reported, investigated and reviewed; and consequences for violations for which residents are found responsible; and considering any consequences thereof as learning experiences for the occupants even when severe consequences must be imposed.
15. Develop policies, practices and standards, subject to the College's approval, for emergency response. Provide the emergency contact information of Operator and Assistant Operator for inclusion in College emergency notification systems. Engage in efforts to assist the College in evacuation processes in the event there is a need for a campus evacuation.
16. Develop and document, subject to the College's approval, policies, procedures and expectations for governing student conduct, including descriptions of standards of acceptable behavior and the potential consequences for violating those standards. For clarification purposes the following apply:
  - Lease Violations including, but not limited to, payment delinquencies, noise complaints, fire code violations, pet policy violations, roommate issues, and sanitation and trash removal violations; that are not simultaneously a violation of the *Student Code of Conduct* may be addressed by the management staff. Operator may seek assistance from the College as needed to address violations. When management evicts any resident for the above reasons, they must first notify the College Chief Housing Officer.
  - Lease violations that are simultaneously violations of the *Student Code of Conduct* will be addressed by the Office of Judicial Affairs. Only the Office of Judicial Affairs may evict a resident for lease violations that are also violations of the Student Code of Conduct.
  - Reporting Lease Violations: Residents may report lease violations and concerns directly to management during regular office hours. If the immediate safety of any individual is in question, the College Police Department should be contacted.
  - Reporting *Student Code of Conduct* Violations: A resident or housing staff should report Student Code of Conduct Violations to the Office of Judicial Affairs. Student Code of Conduct Violations (that are not simultaneously violations of the law) are initially addressed by the management staff through a referral to the Office of Judicial Affairs. If the immediate safety of any individual is in question, the College Police Department should be contacted.
  - Reporting of Violations of Law: Violations of Law should be immediately reported to the College Police Department for investigation. The Office of

Judicial Affairs may issue charges against a student based upon the information obtained by the College Police Department or other entity as appropriate. These charges will be issued without regard to the pendency of civil litigation in court or criminal arrest and prosecution. Proceedings under the Student Code of Conduct may be carried out prior to, simultaneously with or following civil or criminal proceedings off-campus as deemed appropriate by the Office of Judicial Affairs.

- Operator reserves the right to address extreme circumstances which could jeopardize the safety of the community forthwith in accordance with their lease with the student. However, all intended actions will be discussed with College officials prior to implementation, if time allows.
17. Develop and maintain a database that includes number, type, location, names, and other information concerning incidents related to residents' behavior as witnessed by or reported to building personnel or College staff.
  18. Conduct regular and on-going research of occupants' satisfaction using surveys, focus groups, exit interviews and other means and provide the results of these surveys to the College Chief Housing Officer. All assessment efforts should be coordinated through the College Chief Housing Officer and follow the rules and protocols of the College and the reporting division.
  19. In conjunction with the College, and in accordance with College procedures, conduct an assessment of occupants that will provide information as to levels of satisfaction with the quality of life within the Student Housing Facility as well as areas for improvement.
  20. Make all room assignments and coordinate the plans of residents for moving into or out of the Student Housing Facility in conjunction with the College's academic year, with a view towards scheduling such movements to minimize inconvenience to other residents.
  21. Maintain businesslike relationships with residents and receive and respond in a timely fashion to all resident complaints, requests for services, and reports of injuries, crimes or similar incidents. Operator shall promptly inform the College's Chief Housing Officer upon receiving any material complaint or any report involving a crime or an injury requiring medical treatment. Upon discovery or receipt of information thereof, Operator also shall promptly inform the College's Police Department of any crime or suspected criminal activity occurring at the Student Housing Facility of which Operator is aware. Operator shall keep systematic records showing the action(s) taken with respect to each complaint, request or report. Each complaint involving student discipline (as reasonably determined by Operator) shall be reported to the College's Office of Judicial Affairs -- Division of Student Engagement and Success.
  22. Unless Company agrees otherwise, employ one General Manager and one Assistant General Manager. The General Manager may not be removed by Operator without Company's permission, which permission shall not be unreasonably withheld, conditioned or delayed.

23. Only use or permit the use of the Student Housing Facility for residential purposes and for related uses approved by Company. Operator shall not conduct or permit any activity at the Facility which would violate any legal requirement, be incompatible with College policies, procedures, or regulations, or constitute a nuisance.
24. At all times allow authorized agents or representatives of the College, Company and the Trustee to have access to the Student Housing Facility.
25. Clearly identify any items of personal property which Operator purchases or has purchased with its own funds (without reimbursement from the Operating Account or otherwise by Company) and which therefore belong to Operator rather than Company.
26. Maintain within the resident database information that allows for all residents to be identified by the Student Banner ID currently used by the College.
27. Any abandoned textbooks, bikes, scooters, skateboards or other recreational equipment will be reported to College Police for pick up to place in lost and found. The same is applicable to other personal items that are found and need to be returned to an owner.
28. Prior to printing/publishing any advertisements or other promotional material relating to the Facility, Operator shall provide the Chief Housing Officer with proofs for approval. All materials will be designed in accordance with College style guidelines and must be approved before use.
29. Operator will establish a procedure to provide data to the College in electronic format to assure the College has current information regarding occupants and to create an efficient transfer of information regarding emergency contact information and financial aid payments.
30. All College rules and regulations to the extent reasonably applicable to the Project, including, but not limited to collection of rent, parking, smoking, security, alcohol and other drug use as well as those outlined in the Student Handbook and the *Student Code of Conduct* will be followed and enforced by Operator.

## **EXHIBIT B**

### **LIST OF PERIODIC REPORTS, PROJECT OPERATING STATEMENTS AND INFORMATION**

Balance Sheet

Income Statement/Statement of Operations (including occupancy rates)

Cash Flow Statement

Budget Reconciliations (to be provided upon request by Company)

Capital Expenditure Report

Project Rent Roll

Aged Delinquency Report

Check Register

Account Payable Report

Following receipt of written notice therefrom from Company to Operator, (i) any other report which Company is currently obligated to furnish pursuant to the terms and provisions of the Ground Sublease, Indenture, Leasehold Mortgage, Continuing Disclosure Agreement or Tax Agreement in connection with the operation and management of the Project, including, without limitation, the information regarding rental rates and units required in Section \_\_\_ of the Continuing Disclosure Agreement and (ii) any information reasonably requested by the College to assist it in complying with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or other applicable law.

No later than twenty-five (25) days after the beginning of each fall and spring semester, Operator shall furnish Company the occupancy report required in Section \_\_\_ of the Continuing Disclosure Agreement.

## EXHIBIT C

### OPERATOR'S COMPENSATION

#### Compensation Once Project Commences Operations

Subject to the terms and provisions of this Operating Agreement, and solely out of amounts available in the O&M Fund or the Subordinated Management Fee Fund, as applicable, as provided under the Indenture, Operator's compensation for management of the Project shall be a fee (the "Management Fee") for each Annual Period or partial Annual Period during the term of this Operating Agreement commencing [August 1], 2019 equal to four percent (4%) of all [Revenues] received during such Annual Period (or partial Annual Period), as follows: two percent (2%) of [Revenues] paid from the O&M Fund, and two percent (2%) payable from the Subordinate Management Fee Fund. The Management Fee shall be calculated on the last Business Day of each month, commencing on [August 31], 2019, based on [Revenues] for that month, and shall be due and payable on the twentieth day of the following month as an Expense of the Project. Company's obligation to pay the Management Fee shall survive the expiration or termination of this Operating Agreement with respect to portions of the Management Fee earned or payable as of such expiration or termination. Upon the termination of this Operating Agreement on a day other than the last day of the calendar month, the Management Fee shall be prorated on a per diem basis for the days in which this Operating Agreement was in effect.

#### Compensation Prior to Commencement of Operations

Starting 30 days after bond closing, and subject to the terms and provisions of this Operating Agreement, and solely out of available Funds in the Development Budget as provided under the Indenture, Operator's compensation for management of the Project shall be a fee (the "Management Fee") for each month commencing [August 1], 2018 and ending on [July 31], 2019 equal to \$10,000 per month. This fee shall be due and payable on the last day of each month beginning [August 31], 2018 and ending on [July 31], 2019.



## Nevada State College

### Debt Financing Term Sheet

#### Project Participants

Issuer/Owner	Public Finance Authority
Facility Operator	American Campus Communities
Asset Manager	American Public Development, LLC
Bondholders	The holders of the Bonds (the “ <b>Bondholders</b> ”).
Bond Trustee	[to be identified]
Structure	<p>The Issuer is expected to obtain the sublease interest in the land and acquire, construct or otherwise obtain an ownership interest in the real property improvements and physical assets constituting the Nevada State College (the “College”) Student Housing Facility (the “Project”). The Issuer is expected to enter into a qualified management contract with the Asset Manager (the “Asset Management Agreement”) that shall assume all material obligations with respect to the operation and management of the Project and the Asset Manager will enter into a qualified management subcontract with the Facility Operator (the “Operating Agreement”). The Operating Agreement may include requirements to enter into third party agreements related to student services, Project administration and Project maintenance. The requirements set forth below in this Term Sheet are intended to be incorporated in the finance documents and, where appropriate, are expected to be passed through to the Asset Manager and the Facility Operator pursuant to the Asset Management Agreement and the Operating Agreement.</p> <p>ALL COVENANTS AND AGREEMENTS OF THE ISSUER IDENTIFIED IN THIS TERM SHEET SHALL BE SUBJECT TO STANDARD CONDITIONS INCLUDING, AMONG OTHER THINGS, LIMITATIONS ON PECUNIARY LIABILITY, CONDITIONS TO ISSUER’S PERFORMANCE OF ITS OBLIGATIONS, AND INDEMNIFICATION OF ISSUER AND ITS AFFILIATED PARTIES. UNDER NO CIRCUMSTANCES SHALL ANY MONEY OR PROPERTY OF THE ISSUER, OTHER THAN AS PLEDGED UNDER THE TRUST INDENTURE AS SECURITY FOR THE BONDS. BE AVAILABLE TO PAY DEBT SERVICE ON THE BONDS OR ANY COSTS OF ANY PERSON IN CONNECTION WITH THE BONDS OR THE PROJECT.</p>

#### Debt Terms and Conditions

Rate Covenant	The Issuer will covenant and agree in the Trust Indenture to cause the Asset Manager to operate the Project to produce Revenues net of Operating and Maintenance Expenses that will provide Income Available for Debt Service – [defined terms to come from Orrick standard boilerplate], together with other funds [includes interest earnings] available for such purpose under the Bond Indenture, sufficient to pay
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#### Debt Service on the Bonds.

Rates, fees and charges shall be subject to consultation with and approval by the Issuer.

Such rates, fees, and charges in each Fiscal Year of the Project (i) for the Fiscal Year ending June 30, \_\_\_\_\_ and thereafter will be sufficient to produce a Debt Service Coverage Ratio of not less than 1.20 with respect to the Bonds and any Additional Debt. If, based upon the annual financial statements of the Project, for any Fiscal Year such Debt Service Coverage Ratio was not maintained, the Issuer agrees to employ promptly a Management Consultant for purposes of obtaining a report of such firm containing recommendations as to changes in the operating policies of the Facility Operator designed to maintain such Debt Service Coverage Ratio and to follow such recommendations.

No default under this paragraph will occur if a Debt Service Coverage Ratio is less than required but at least 1.00 with respect to the Bonds and if such recommendations are followed notwithstanding that such required Debt Service Coverage Ratio is not subsequently reattained, but the Issuer will continue to be obligated to employ a Management Consultant for such purpose until the required Debt Service Coverage Ratio is reattained.

The Issuer will covenant in the Trust Indenture and the Asset Manager will covenant in the Asset Management Agreement that from time to time as often as necessary and to the extent permitted by law, and subject to the Issuer's approval, they will revise the rates, fees, and charges or management expenses in such manner as may be necessary so that Income Available for Debt Service will be sufficient to meet the requirements of the Trust Indenture, and further, that the Issuer and Asset Manager will take all reasonable and necessary action within their power to obtain approvals of any regulatory or supervisory authority to implement any rates, fees, and charges required in order to comply with the provisions of the Trust Indenture.

#### Additional Debt

Provided that no Default or Event of Default under the Trust Indenture has occurred and is continuing, the Issuer may, in its sole discretion and at the request of the Asset Manager, incur indebtedness in the form of additional Debt ("**Additional Debt**") as follows:

1. Completion Bonds for 10% of original par
2. For the purpose of financing the cost of Additions or Alterations: (i) the Debt Service Coverage Ratio, taking into account the proposed Additional Debt to be incurred as if it had been incurred at the beginning of such period, for the two Fiscal Years immediately preceding the issuance of the proposed Additional Debt was not less



than 1.20 with respect to the Bonds, or (ii) (A) the Debt Service Coverage Ratio for the two Fiscal Years immediately preceding the issuance of the proposed Additional Debt was not less than 1.20 with respect to the Bonds, and (B)(1) a management consultant's report that the forecasted Debt Service Coverage Ratio for the first full Fiscal Year immediately succeeding the year in which such Additions or Alterations are placed in operation is not less than 1.20 with respect to the Bonds, or (2) a certificate of the Asset Manager that the forecasted Debt Service Coverage Ratio for the first full Fiscal Year immediately succeeding the year in which such Additions or Alterations are placed in operation is not less than 1.20 with respect to the Bonds, or (iii) a certificate of an Authorized Issuer Representative to the effect that such Additions or Alterations were necessary to comply with a change in applicable law or regulation, were ordered by a governmental body, and such Additional Bonds are not in an amount greater than necessary to comply with such order or change in applicable law or regulation

3. "Working capital" borrowings which are payable as Operating Expenses and secured by the Trust Estate under the Trust Indenture on a pari passu basis with the Senior Bonds, provided the amount of such borrowings must not exceed 30 days of operating expenses and the working capital borrowings must be paid down to a zero balance for five consecutive days at least once every 365 days. Working capital obligations will be on parity with debt service on the Bonds.

Payment Dates Principal and interest on any Additional Indebtedness shall be paid on May 1 and November 1, or other dates as mutually agreed upon by all Project stakeholders. Working capital borrowing paid on short term basis and will not have semi-annual payments.

Extraordinary Redemption The Bonds will be subject to redemption, in whole or in part on any date, at par from funds available as a result of each of the following circumstances: (1) in the event of damage to or destruction of the Project or any material part thereof, (2) in the event of condemnation of all or a material portion of the Project, (3) if as a result of changes to the Constitution of the United States or of the State, or as a result of legislative, executive, or judicial action of the United States, the State, or any political subdivision thereof, or a regulatory body, the Development Agreement becomes void, unenforceable, or impossible of performance in accordance with the present intentions of the parties, (4) in the event Net Proceeds of the Title Policy are available to redeem Bonds, or (5) if proceeds received from the granting or release of easements or subordination of the Premises.

Notwithstanding the foregoing, Debt will be called for redemption on any date, in whole and not in part, automatically without written direction of an Authorized Issuer Representative, in the event of: damage to or destruction of the Project or any part thereof, or condemnation of all or a portion of the





Project.

Required Lenders

Amendments and waivers shall require the consent of the Bondholders of a majority of the aggregate amount of Debt (the “**Required Lenders**”), except for those matters that customarily require unanimous consent of affected lenders (such as reduction in interest rates extension of maturity date, change in voting protocol, and release of material collateral). “No-adverse-effect” amendments do not require consent.

**Bonds**

Mode

The Bonds will be tax-exempt, rated, investment grade, current interest fixed rate bonds.

Bond Payment Frequency

Semiannual interest and annual principal payment dates will be scheduled for May 1 and November 1, or other dates as mutually agreed upon by all Project stakeholders.

Maturity

TBD

Optional Redemption

The Bonds will be callable at par at the option of Issuer in whole or in part at any time on and after [November 1, 2028].

Debt Collateral

All obligations of the Issuer will be secured by the following collateral (the “**Collateral**”):

- (a) the Issuer’s granting of a lien on, and security interest in, the Revenues of the Project,
- (b) the Issuer’s granting of a mortgage on its sublease interest in the property and physical assets constituting the Nevada State College Student Housing Facility, and
- (c) the Issuer’s assignment and pledge to, and grant to, the Bond Trustee, a security interest in and a lien on all of the Issuer’s personal property, located at and used in connection with the operation of the Project, together with the Issuer’s rights (other than certain reserved rights) under the agreements to which the Issuer is a party.

The Bonds and any additional debt will be also secured by the funds held by the Bond Trustee in certain accounts under the Trust Indenture.

In addition, the Facility Operator and Asset Manager will be required to collaterally assign the material Project Documents to the Bond Trustee.

**Funds and Accounts**

Funds and Accounts

The following accounts will be established and held by the Bond Trustee:

- 1. Revenue Fund
- 2. Construction Fund
- 3. O&M Fund



4. Senior Ground Lease Payment Account
5. Subordinate Ground Lease Payment Account
6. Bond Fund (Principal and Interest)
7. Capitalized Interest Subaccount
8. Rebate Fund
9. Debt Service Reserve Fund
10. Repair and Replacement Fund
11. Subordinate Fee Account
12. Extraordinary Expense Account
13. Operating Reserve Fund
14. Surplus Fund

#### Flow of Funds

All Revenues, including investment income on all funds, will be deposited daily with the Bond Trustee into the Revenue Fund and applied monthly on the third business day prior to the first day of each month (a “**Transfer Date**”) in the following order of priority:

1. To the Facility Operator for deposit in its O&M Fund the amount specified in the Annual Budget for the following month’s Operating and Maintenance Expenses, together with such additional amounts for other necessary expenditures not included in the Annual Budget requested in writing by an Authorized Representative of the Asset Manager, not to exceed ten percent (10%) of amount set forth in the Annual Budget, which amount will be set forth in a certificate of the Asset Manager delivered to the Bond Trustee, PLUS to the Senior Ground Lease Payment Account, 1/12<sup>th</sup> of the senior ground lease base rent due in that Fiscal Year;
2. Into the Bond Fund (commencing 12 months before the applicable first principal payment and sinking fund payment), the amount required to bring the balance in each Bond Principal and Interest Account equal to the next principal and interest payment and sinking fund payment due on the Bonds divided by 12;
3. Into the Rebate Fund the amount the Issuer is obligated to pay pursuant to the Trust Indenture in accordance with the Tax Certificate;
4. Into the Debt Service Reserve Fund, 1/36<sup>th</sup> of the amount required to bring the balance in Debt Service Reserve Account equal to the Debt Service Reserve Requirement;
5. Into the Repair and Replacement Fund, an amount required to bring the balance in the Repair and Replacement Fund to be equal to the Minimum Repair and Replacement Fund Balance requirement



(defined below);

6. Into the Subordinated Fee Account, the Subordinated Asset Management and Operator Fees due for the period, PLUS to the Subordinated Ground Lease Payment Account, 1/12th of the subordinate ground lease base rent due in that Fiscal Year;
7. Into the Extraordinary Expense Account an amount required to bring the balance in the Extraordinary Expense Account to be equal to the Minimum Extraordinary Expense Account Balance requirement;
8. Into the Operating Reserve Fund an amount required to bring the balance in the Operating Reserve Fund to be equal to the Minimum Operating Reserve Fund Balance requirement (defined below); and
9. Into the Surplus Fund, an amount leftover after each of the prior transfers to be released to the College in the amounts, at the times, and upon the terms and conditions specified in the Trust Indenture.

Debt Service Reserve Fund	The Debt Service Reserve Fund shall be funded at issuance of the Bonds in an amount equal to the lesser of (1) 10% of the proceeds of the Bonds, (2) 125% of average annual debt service on the Bonds and (3) maximum annual debt service on the Bonds (the " <b>Debt Service Reserve Requirement</b> "). The Debt Service Reserve Fund shall solely secure the Bonds. To the extent there is a shortfall in the Bond Debt Service Reserve Fund, such shortfall shall be replenished as described in paragraph 4 of the " <i>Flow of Funds</i> " until the Bond Debt Service Reserve Fund balance equals the Debt Service Reserve Requirement.
Repair and Replacement Fund	The Trust Indenture also creates a Repair and Replacement Fund, which is a trust fund into which the Issuer is required to make deposits from Revenues on a monthly basis as and to the extent set forth in the Trust Indenture. The Minimum Repair and Replacement Fund Balance means the sum of [\$175 per operational bed plus \$x,xxx].
Operating Reserve Fund	The Trust Indenture also creates an Operating Reserve Fund, which is a trust fund into which the Issuer is required to make deposits from Revenues on a monthly basis as and to the extent set forth in the Trust Indenture. The Minimum Operating Reserve Fund Balance means 25% of the then-current annual operating expense budget.
Capitalized Interest Subaccount	Within the Bond Fund, a Capitalized Interest Subaccount will be created and funded with Bonds Proceeds in the amount needed to pay interest from the delivery date of the Bonds through six months past expected construction completion.



Construction Fund

Bond proceeds will be deposited in the Construction Fund and will be applied to pay the cost of acquisition, construction and equipping of the Project and to pay pre-opening expenses.



FORM OF CLOSING CERTIFICATE OF  
NEVADA STATE COLLEGE

The Board of Regents of the Nevada System of Higher Education on behalf of Nevada State College (College) has entered into a Ground Lease and Project Development Agreement with American Public Development, LLC (ADP) for the construction, operation and maintenance of a student housing facility (Project).

APD has entered into a Sublease and Asset Management Agreement with Public Finance Authority (Authority) who will finance and own the Project while APD will manage the Project.

APD has entered into a Facility Operator Agreement with ACC SC Management, LLC (ACC) to operate the Project.

I, the undersigned do hereby certify as follows:

1. I have been, since at least July 1, 2014 and presently am, on and as of the date of this Certificate, the officer of the College holding the office indicated below:

<u>Name</u>	<u>Position</u>
Kevin S. Butler	Vice President for Finance and Business Operation at Nevada State College

2. The College represents and warrants that it has full power and authority to execute, deliver and perform (as applicable), each of the following (hereinafter collectively referred to as the “**College Documents**”):

- The Ground Lease Agreement between Nevada State College and American Public Development, LLC
- The Project Development Agreement between Nevada State College and American Public Development, LLC
- The Recognition, Consent, Non-Disturbance and Estoppel Agreement between Nevada State College and American Public Development, LLC
- The Indemnity Agreement between Nevada State College and First American Title Insurance Company

3. The College Documents were approved and authorized to be executed by The Board of Regents of the Nevada System of Higher Education (with such changes therein as the officer executing the same has approved, with the advice of counsel).

4. The execution, delivery and performance of all agreements, certificates and documents required to be executed, delivered and performed by the College in order to carry out, give effect to and consummate the transactions contemplated by the College Documents have been duly authorized by all necessary action of the College.

5. The College Documents are all in full force and effect on and as of the date hereof, and no authority for the execution, delivery or performance of any College Document has been repealed, revoked or rescinded.

6. Omitted.

7. No Event of Default specified in any of the College Documents, and no event which, with notice or lapse of time or both, would become such an Event of Default, has occurred or is continuing.

8. Except as set forth in the Official Statement, there is no litigation or proceedings pending or, to the best knowledge of the undersigned, threatened against the College in which the probable ultimate recoveries and the estimated costs and expenses of defense (I) will not be entirely within applicable insurance policy limits or not in excess of the total available reserves held under applicable self-insurance programs, or (II) could have a material adverse effect on the operations or financial condition of the College.

9. The information contained in the Official Statement relating to the College and the descriptions of the documents to which the College is a party, as of its date was, and as of the date hereof is, true and complete in all material respects.

WITNESS the official signature of the undersigned as of the \_\_th day of \_\_\_\_, 2018.

**NEVADA STATE COLLEGE**

By: \_\_\_\_\_  
Name:  
Title:

CAMPUS VILLAGE AT NEVADA STATE COLLEGE  
 OPERATING PRO FORMA

		OPENING	2	3	4	5	6	7	8	9	10
	Annual % Increase	2019-2020	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
<b>REVENUES</b>											
Market Rate Units	3%	\$2,041,200	\$2,522,923	\$2,742,978	\$2,825,268	\$2,910,026	\$2,997,326	\$3,087,246	\$3,179,863	\$3,275,259	\$3,373,517
Other Revenue	3%	\$56,250	\$67,500	\$75,000	\$77,250	\$79,568	\$81,955	\$84,413	\$86,946	\$89,554	\$92,241
<b>Total Revenues</b>		<b>\$2,097,450</b>	<b>\$2,590,423</b>	<b>\$2,817,978</b>	<b>\$2,902,518</b>	<b>\$2,989,593</b>	<b>\$3,079,281</b>	<b>\$3,171,659</b>	<b>\$3,266,809</b>	<b>\$3,364,813</b>	<b>\$3,465,758</b>
<b>OPERATING EXPENSES</b>											
Utilities	3.0%	\$112,500	\$150,000	\$154,500	\$159,135	\$163,909	\$168,826	\$173,891	\$179,108	\$184,481	\$190,016
Professional Services & Reimbursables	3.0%	\$25,000	\$25,750	\$26,523	\$27,318	\$28,138	\$28,982	\$29,851	\$30,747	\$31,669	\$32,619
Management Staff	3.0%	\$288,331	\$296,981	\$305,890	\$315,067	\$324,519	\$334,255	\$344,282	\$354,611	\$365,249	\$376,207
Maintenance Expenses	3.0%	\$96,996	\$99,906	\$102,903	\$105,990	\$109,170	\$112,445	\$115,818	\$119,293	\$122,872	\$126,558
Marketing	3.0%	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900
General and Administrative	3.0%	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904
Insurance	3.0%	\$50,000	\$51,500	\$53,045	\$54,636	\$56,275	\$57,964	\$59,703	\$61,494	\$63,339	\$65,239
Property Management Fee 2%		\$41,949	\$51,808	\$56,360	\$58,050	\$59,792	\$61,586	\$63,433	\$65,336	\$67,296	\$69,315
Asset Management Fees 4%		\$83,898	\$103,617	\$112,719	\$116,101	\$119,584	\$123,171	\$126,866	\$130,672	\$134,593	\$138,630
Audit/Accounting Fees	3.0%	\$20,000	\$20,600	\$21,218	\$21,855	\$22,510	\$23,185	\$23,881	\$24,597	\$25,335	\$26,095
PFA Ownership Fee		\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200
<b>Total Operating Expenses</b>		<b>\$868,678</b>	<b>\$950,166</b>	<b>\$983,162</b>	<b>\$1,008,156</b>	<b>\$1,033,901</b>	<b>\$1,060,418</b>	<b>\$1,087,730</b>	<b>\$1,115,862</b>	<b>\$1,144,838</b>	<b>\$1,174,683</b>
<b>NET OPERATING INCOME</b>		<b>\$1,228,772</b>	<b>\$1,640,257</b>	<b>\$1,834,817</b>	<b>\$1,894,361</b>	<b>\$1,955,692</b>	<b>\$2,018,863</b>	<b>\$2,083,929</b>	<b>\$2,150,947</b>	<b>\$2,219,976</b>	<b>\$2,291,075</b>
<b>FINANCING COSTS</b>											
Interest Payment on Debt		\$534,896	\$1,223,133	\$1,223,133	\$1,223,133	\$1,223,133	\$1,203,133	\$1,179,383	\$1,154,133	\$1,124,883	\$1,094,133
Principal Payment on Debt		-	-	-	-	400,000	475,000	505,000	585,000	615,000	645,000
<b>Total Debt Service</b>		<b>\$534,896</b>	<b>\$1,223,133</b>	<b>\$1,223,133</b>	<b>\$1,223,133</b>	<b>\$1,623,133</b>	<b>\$1,678,133</b>	<b>\$1,684,383</b>	<b>\$1,739,133</b>	<b>\$1,739,883</b>	<b>\$1,739,133</b>
DSCR		2.30	1.34	1.50	1.55	1.20	1.20	1.24	1.24	1.28	1.32
Cash Flow After Debt Service		\$693,876	\$417,124	\$611,683	\$671,228	\$332,559	\$340,730	\$399,546	\$411,814	\$480,092	\$551,942
Cumulative Cash Flow After Debt Service		\$693,876	\$1,111,000	\$1,722,683	\$2,393,911	\$2,726,470	\$3,067,200	\$3,466,745	\$3,878,559	\$4,358,651	\$4,910,593
<b>SUBORDINATE EXPENSES / RESERVES</b>											
Capital Renewal Reserve	3.0%	\$0	\$0	\$54,600	\$56,238	\$57,925	\$59,663	\$61,453	\$63,296	\$65,195	\$67,151
Utilities	3.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Base Rent	3.0%	\$0	\$50,000	\$51,500	\$53,045	\$54,636	\$56,275	\$57,964	\$59,703	\$61,494	\$63,339
Property Management Fee 2%		\$41,949	\$51,808	\$56,360	\$58,050	\$59,792	\$61,586	\$63,433	\$65,336	\$67,296	\$69,315
Subordinated Asset Management Fee 4%		\$83,898	\$103,617	\$112,719	\$116,101	\$119,584	\$123,171	\$126,866	\$130,672	\$134,593	\$138,630
Extraordinary Expense Account		\$120,000	\$120,000	\$10,000							
Operating Reserve Fund		\$217,170	\$20,372	\$8,249	\$6,249	\$6,436	\$6,629	\$6,828	\$7,033	\$7,244	\$7,461
<b>Total Subordinate Expenses</b>		<b>\$463,017</b>	<b>\$345,797</b>	<b>\$293,428</b>	<b>\$289,683</b>	<b>\$298,373</b>	<b>\$307,324</b>	<b>\$316,544</b>	<b>\$326,040</b>	<b>\$335,822</b>	<b>\$345,896</b>
<b>Surplus Cash Flow</b>		<b>\$230,860</b>	<b>\$71,326</b>	<b>\$318,256</b>	<b>\$381,545</b>	<b>\$34,186</b>	<b>\$33,405</b>	<b>\$83,002</b>	<b>\$85,773</b>	<b>\$144,271</b>	<b>\$206,045</b>

11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
2029-30	2030-31	2031-32	2032-33	2033-34	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40	2040-41	2041-42	2042-43	2043-44	2044-45
\$3,474,723	\$3,578,964	\$3,686,333	\$3,796,923	\$3,910,831	\$4,028,156	\$4,149,001	\$4,273,471	\$4,401,675	\$4,533,725	\$4,669,737	\$4,809,829	\$4,954,124	\$5,102,747	\$5,255,830	\$5,413,505
\$95,008	\$97,858	\$100,794	\$103,818	\$106,932	\$110,140	\$113,444	\$116,848	\$120,353	\$123,964	\$127,682	\$131,513	\$135,458	\$139,522	\$143,708	\$148,019
<b>\$3,569,730</b>	<b>\$3,676,822</b>	<b>\$3,787,127</b>	<b>\$3,900,741</b>	<b>\$4,017,763</b>	<b>\$4,138,296</b>	<b>\$4,262,445</b>	<b>\$4,390,318</b>	<b>\$4,522,028</b>	<b>\$4,657,689</b>	<b>\$4,797,419</b>	<b>\$4,941,342</b>	<b>\$5,089,582</b>	<b>\$5,242,269</b>	<b>\$5,399,538</b>	<b>\$5,561,524</b>
\$195,716	\$201,587	\$207,635	\$213,864	\$220,280	\$226,888	\$233,695	\$240,706	\$247,927	\$255,365	\$263,026	\$270,917	\$279,044	\$287,416	\$296,038	\$304,919
\$33,598	\$34,606	\$35,644	\$36,713	\$37,815	\$38,949	\$40,118	\$41,321	\$42,561	\$43,838	\$45,153	\$46,507	\$47,903	\$49,340	\$50,820	\$52,344
\$387,493	\$399,118	\$411,091	\$423,424	\$436,127	\$449,210	\$462,687	\$476,567	\$490,864	\$505,590	\$520,758	\$536,381	\$552,472	\$569,046	\$586,118	\$603,701
\$130,355	\$134,265	\$138,293	\$142,442	\$146,715	\$151,117	\$155,650	\$160,320	\$165,129	\$170,083	\$175,186	\$180,441	\$185,854	\$191,430	\$197,173	\$203,088
\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900
\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904
\$67,196	\$69,212	\$71,288	\$73,427	\$75,629	\$77,898	\$80,235	\$82,642	\$85,122	\$87,675	\$90,306	\$93,015	\$95,805	\$98,679	\$101,640	\$104,689
\$71,395	\$73,536	\$75,743	\$78,015	\$80,355	\$82,766	\$85,249	\$87,806	\$90,441	\$93,154	\$95,948	\$98,827	\$101,792	\$104,845	\$107,991	\$111,230
\$142,789	\$147,073	\$151,485	\$156,030	\$160,711	\$165,532	\$170,498	\$175,613	\$180,881	\$186,308	\$191,897	\$197,654	\$203,583	\$209,691	\$215,982	\$222,461
\$26,878	\$27,685	\$28,515	\$29,371	\$30,252	\$31,159	\$32,094	\$33,057	\$34,049	\$35,070	\$36,122	\$37,206	\$38,322	\$39,472	\$40,656	\$41,876
\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200
<b>\$1,205,423</b>	<b>\$1,237,086</b>	<b>\$1,269,698</b>	<b>\$1,303,289</b>	<b>\$1,337,888</b>	<b>\$1,373,524</b>	<b>\$1,410,230</b>	<b>\$1,448,036</b>	<b>\$1,486,977</b>	<b>\$1,527,087</b>	<b>\$1,568,399</b>	<b>\$1,610,951</b>	<b>\$1,654,779</b>	<b>\$1,699,923</b>	<b>\$1,746,420</b>	<b>\$1,794,313</b>
\$2,364,307	\$2,439,737	\$2,517,429	\$2,597,452	\$2,679,876	\$2,764,772	\$2,852,215	\$2,942,282	\$3,035,050	\$3,130,602	\$3,229,020	\$3,330,391	\$3,434,803	\$3,542,347	\$3,653,117	\$3,767,211
1,061,883	1,027,883	992,133	954,633	915,383	874,133	830,883	785,383	737,633	687,383	634,633	579,383	521,383	460,383	396,383	329,133
680,000	715,000	750,000	785,000	825,000	865,000	910,000	955,000	1,005,000	1,055,000	1,105,000	1,160,000	1,220,000	1,280,000	1,345,000	1,410,000
<b>\$1,741,883</b>	<b>\$1,742,883</b>	<b>\$1,742,133</b>	<b>\$1,739,633</b>	<b>\$1,740,383</b>	<b>\$1,739,133</b>	<b>\$1,740,883</b>	<b>\$1,740,383</b>	<b>\$1,742,633</b>	<b>\$1,742,383</b>	<b>\$1,739,633</b>	<b>\$1,739,383</b>	<b>\$1,741,383</b>	<b>\$1,740,383</b>	<b>\$1,741,383</b>	<b>\$1,739,133</b>
1.36	1.40	1.45	1.49	1.54	1.59	1.64	1.69	1.74	1.80	1.86	1.91	1.97	2.04	2.10	2.17
\$622,424	\$696,853	\$775,296	\$857,819	\$939,492	\$1,025,639	\$1,111,332	\$1,201,898	\$1,292,417	\$1,388,219	\$1,489,387	\$1,591,008	\$1,693,419	\$1,801,964	\$1,911,734	\$2,028,078
\$5,533,017	\$6,229,870	\$7,005,166	\$7,862,985	\$8,802,477	\$9,828,116	\$10,939,447	\$12,141,346	\$13,433,763	\$14,821,982	\$16,311,369	\$17,902,376	\$19,595,796	\$21,397,759	\$23,309,493	\$25,337,571
<b>\$69,166</b>	<b>\$71,241</b>	<b>\$73,378</b>	<b>\$75,579</b>	<b>\$77,847</b>	<b>\$80,182</b>	<b>\$82,587</b>	<b>\$85,065</b>	<b>\$87,617</b>	<b>\$90,245</b>	<b>\$92,953</b>	<b>\$95,741</b>	<b>\$98,614</b>	<b>\$101,572</b>	<b>\$104,619</b>	<b>\$107,758</b>
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$65,239	\$67,196	\$69,212	\$71,288	\$73,427	\$75,629	\$77,898	\$80,235	\$82,642	\$85,122	\$87,675	\$90,306	\$93,015	\$95,805	\$98,679	\$101,640
\$71,395	\$73,536	\$75,743	\$78,015	\$80,355	\$82,766	\$85,249	\$87,806	\$90,441	\$93,154	\$95,948	\$98,827	\$101,792	\$104,845	\$107,991	\$111,230
\$142,789	\$147,073	\$151,485	\$156,030	\$160,711	\$165,532	\$170,498	\$175,613	\$180,881	\$186,308	\$191,897	\$197,654	\$203,583	\$209,691	\$215,982	\$222,461
<b>\$7,685</b>	<b>\$7,916</b>	<b>\$8,153</b>	<b>\$8,398</b>	<b>\$8,650</b>	<b>\$8,909</b>	<b>\$9,176</b>	<b>\$9,452</b>	<b>\$9,735</b>	<b>\$10,027</b>	<b>\$10,328</b>	<b>\$10,638</b>	<b>\$10,957</b>	<b>\$11,286</b>	<b>\$11,624</b>	<b>\$11,973</b>
<b>\$356,273</b>	<b>\$366,961</b>	<b>\$377,970</b>	<b>\$389,309</b>	<b>\$400,989</b>	<b>\$413,018</b>	<b>\$425,409</b>	<b>\$438,171</b>	<b>\$451,316</b>	<b>\$464,856</b>	<b>\$478,801</b>	<b>\$493,165</b>	<b>\$507,960</b>	<b>\$523,199</b>	<b>\$538,895</b>	<b>\$555,062</b>
<b>\$266,151</b>	<b>\$329,892</b>	<b>\$397,325</b>	<b>\$468,509</b>	<b>\$538,504</b>	<b>\$612,620</b>	<b>\$685,923</b>	<b>\$763,727</b>	<b>\$841,101</b>	<b>\$923,363</b>	<b>\$1,010,585</b>	<b>\$1,097,842</b>	<b>\$1,185,459</b>	<b>\$1,278,764</b>	<b>\$1,372,839</b>	<b>\$1,473,016</b>



2045-46	2046-47	2047-48	2048-49	2049-50	2050-51	2051-52	2052-53	2053-54	2054-55	2055-56	2056-57	2057-58	2058-59	SUMMARY
\$5,575,910	\$5,743,187	\$5,915,483	\$6,092,947	\$6,275,736	\$6,464,008	\$6,657,928	\$6,857,666	\$7,063,396	\$7,275,298	\$7,493,557	\$7,718,363	\$7,949,914	\$8,188,412	
\$152,460	\$157,033	\$161,744	\$166,597	\$171,595	\$176,742	\$182,045	\$187,506	\$193,131	\$198,925	\$204,893	\$211,040	\$217,371	\$223,892	
<b>\$5,728,369</b>	<b>\$5,900,220</b>	<b>\$6,077,227</b>	<b>\$6,259,544</b>	<b>\$6,447,330</b>	<b>\$6,640,750</b>	<b>\$6,839,973</b>	<b>\$7,045,172</b>	<b>\$7,256,527</b>	<b>\$7,474,223</b>	<b>\$7,698,449</b>	<b>\$7,929,403</b>	<b>\$8,167,285</b>	<b>\$8,412,304</b>	
\$314,067	\$323,489	\$333,193	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	
\$53,915	\$55,532	\$57,198	\$58,914	\$60,682	\$62,502	\$64,377	\$66,308	\$68,298	\$70,347	\$72,457	\$74,631	\$76,870	\$79,176	
\$621,812	\$640,466	\$659,680	\$679,471	\$699,855	\$720,851	\$742,476	\$764,750	\$787,693	\$811,324	\$835,663	\$860,733	\$886,555	\$913,152	
\$209,181	\$215,456	\$221,920	\$228,577	\$235,435	\$242,498	\$249,773	\$257,266	\$264,984	\$272,933	\$281,121	\$289,555	\$298,242	\$307,189	
\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	\$34,900	
\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	\$63,904	
\$107,830	\$111,064	\$114,396	\$117,828	\$121,363	\$125,004	\$128,754	\$132,617	\$136,595	\$140,693	\$144,914	\$149,261	\$153,739	\$158,351	
\$114,567	\$118,004	\$121,545	\$125,191	\$128,947	\$132,815	\$136,799	\$140,903	\$145,131	\$149,484	\$153,969	\$158,588	\$163,346	\$168,246	
\$229,135	\$236,009	\$243,089	\$250,382	\$257,893	\$265,630	\$273,599	\$281,807	\$290,261	\$298,969	\$307,938	\$317,176	\$326,691	\$336,492	
\$43,132	\$44,426	\$45,759	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	
\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	
<b>\$1,843,642</b>	<b>\$1,894,451</b>	<b>\$1,946,784</b>	<b>\$2,000,688</b>	<b>\$2,044,499</b>	<b>\$2,089,624</b>	<b>\$2,136,103</b>	<b>\$2,183,976</b>	<b>\$2,233,286</b>	<b>\$2,284,075</b>	<b>\$2,336,387</b>	<b>\$2,390,269</b>	<b>\$2,445,767</b>	<b>\$2,502,931</b>	
\$3,884,728	\$4,005,769	\$4,130,443	\$4,258,856	\$4,402,832	\$4,551,126	\$4,703,870	\$4,861,196	\$5,023,241	\$5,190,148	\$5,362,062	\$5,539,134	\$5,721,518	\$5,909,373	
258,633	184,633	106,883	(2,116,800)	-	-	-	-	-	-	-	-	-	-	
1,480,000	1,555,000	1,635,000	1,715,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<b>\$1,738,633</b>	<b>\$1,739,633</b>	<b>\$1,741,883</b>	<b>-\$401,800</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	
2.23	2.30	2.37	-10.60											
\$2,146,094	\$2,266,136	\$2,388,559	\$4,660,656	\$4,402,832	\$4,551,126	\$4,703,870	\$4,861,196	\$5,023,241	\$5,190,148	\$5,362,062	\$5,539,134	\$5,721,518	\$5,909,373	
\$27,483,665	\$29,749,802	\$32,138,361	\$36,799,017	\$41,201,849	\$45,752,975	\$50,456,845	\$55,318,040	\$60,341,281	\$65,531,430	\$70,893,492	\$76,432,626	\$82,154,143	\$88,063,516	
<b>\$110,991</b>	<b>\$114,320</b>	<b>\$117,750</b>	<b>\$121,282</b>	<b>\$124,921</b>	<b>\$128,668</b>	<b>\$132,529</b>	<b>\$136,504</b>	<b>\$140,600</b>	<b>\$144,818</b>	<b>\$149,162</b>	<b>\$153,637</b>	<b>\$158,246</b>	<b>\$162,993</b>	
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
\$104,689	\$107,830	\$111,064	\$114,396	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$ 2,260,943
\$114,567	\$118,004	\$121,545	\$125,191	\$128,947	\$132,815	\$136,799	\$140,903	\$145,131	\$149,484	\$153,969	\$158,588	\$163,346	\$168,246	
\$229,135	\$236,009	\$243,089	\$250,382	\$257,893	\$265,630	\$273,599	\$281,807	\$290,261	\$298,969	\$307,938	\$317,176	\$326,691	\$336,492	
<b>\$12,332</b>	<b>\$12,702</b>	<b>\$13,083</b>	<b>\$13,476</b>	<b>\$10,953</b>	<b>\$11,281</b>	<b>\$11,620</b>	<b>\$11,968</b>	<b>\$12,327</b>	<b>\$12,697</b>	<b>\$13,078</b>	<b>\$13,470</b>	<b>\$13,875</b>	<b>\$14,291</b>	
<b>\$571,714</b>	<b>\$588,865</b>	<b>\$606,531</b>	<b>\$624,727</b>	<b>\$522,713</b>	<b>\$538,395</b>	<b>\$554,547</b>	<b>\$571,183</b>	<b>\$588,319</b>	<b>\$605,968</b>	<b>\$624,147</b>	<b>\$642,872</b>	<b>\$662,158</b>	<b>\$682,022</b>	
<b>\$1,574,380</b>	<b>\$1,677,271</b>	<b>\$1,782,028</b>	<b>\$4,035,929</b>	<b>\$3,880,118</b>	<b>\$4,012,731</b>	<b>\$4,149,323</b>	<b>\$4,290,013</b>	<b>\$4,434,923</b>	<b>\$4,584,180</b>	<b>\$4,737,915</b>	<b>\$4,896,262</b>	<b>\$5,059,360</b>	<b>\$5,227,350</b>	\$ 69,176,074
			\$23,903,898											\$ 71,437,016



**NEVADA STATE**  
COLLEGE

# State Campus Village

PGAL



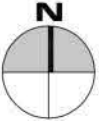
MISSION HILLS

NEVADA STATE COLLEGE DRIVE

PROPOSED STATE CAMPUS VILLAGE

NEVADA STATE COLLEGE SITE

POWER TRANSMISSION LINES EASEMENT



# Nevada State College Site

(BUSINESS, FINANCE & FACILITIES COMMITTEE 06/07/18) Ref. BFF-10, Page 299 of 389

April 30 2018





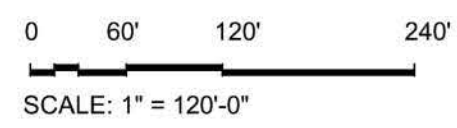
# Site Plan

State Campus Village

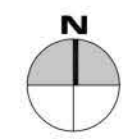


NEVADA STATE  
COLLEGE





# Enlarged Site Plan P1





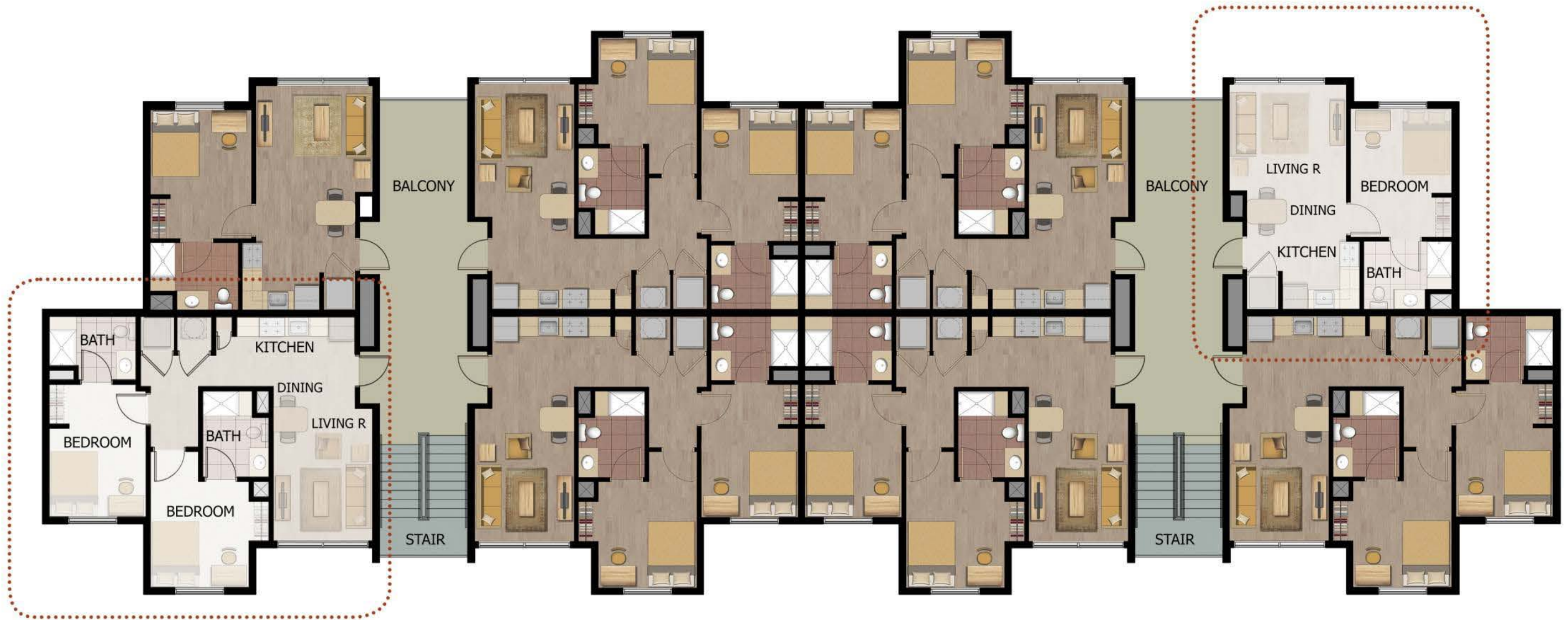
# Residential Building Plans

State Campus Village



NEVADA STATE  
COLLEGE

**1 BEDROOM UNIT**  
441 NSF. PER UNIT



**2 BEDROOM UNIT**  
689 NSF. PER UNIT

GROSS AREA BUILDING 2-2 UNITS AND 1-2 UNITS		
7,307 GROSS SF. / 3 FLOORS	(2 - BEDROOM TYPE)	= 6 UNITS / FLOOR
6,721 GROSS SF. / 3 FLOORS	(1 - BEDROOM TYPE)	= 2 UNITS / FLOOR
20,795 GROSS SF.		

NO. OF 2 BEDROOM UNITS FLOORS 1, 2 & 3 =  
NO. OF 1 BEDROOM UNITS FLOORS 1, 2 & 3 =  
**TOTALS PER BUILDING =**

18 UNITS = 36 BEDS  
6 UNITS = 6 BEDS  
**24 UNITS = 42 BEDS**





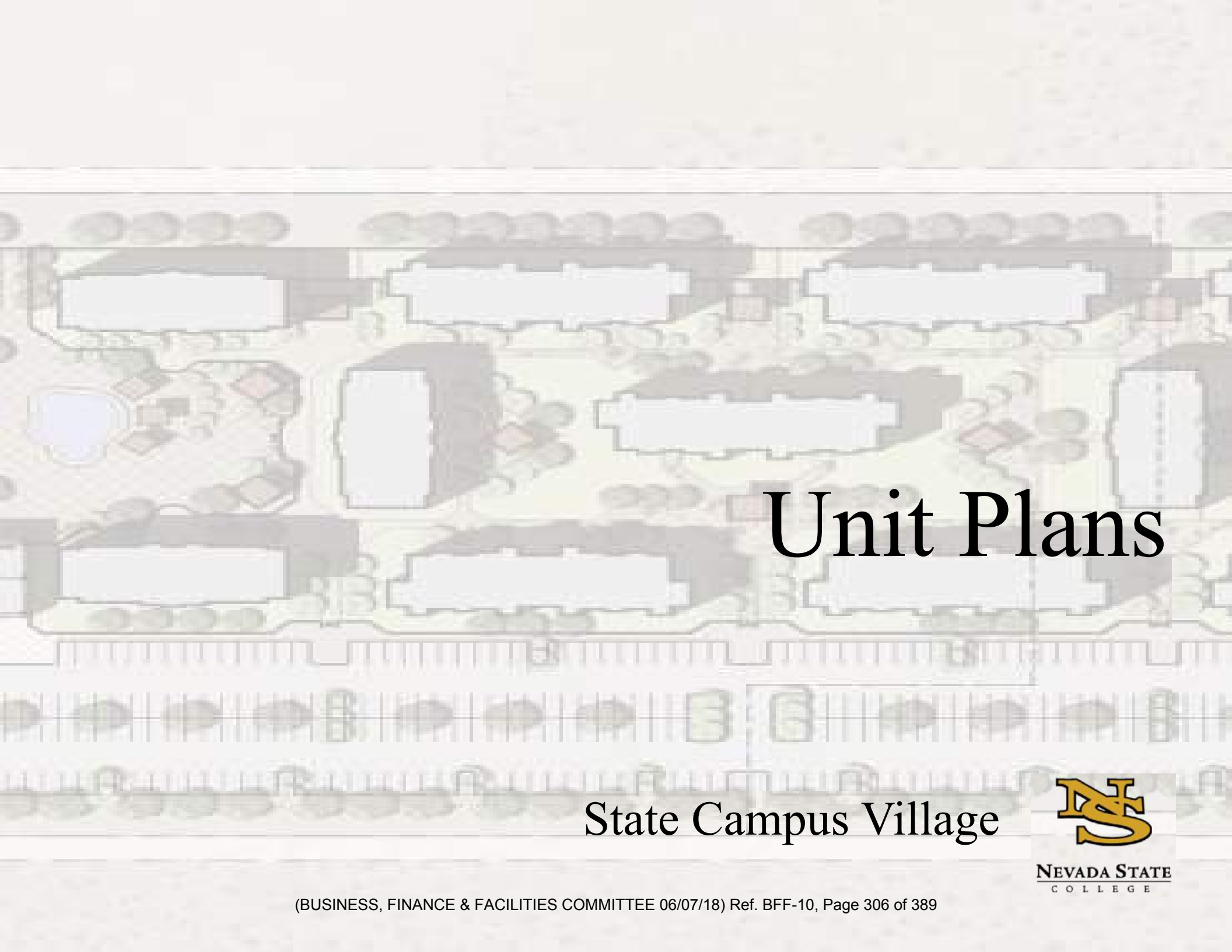
5,269 GROSS SF. / FLOOR

**4 BEDROOM UNIT**

1,080 NSF. PER UNIT

GROSS AREA BUILDING 4-2 UNITS		
FLOOR AREA	NO. OF FLOORS	TOTAL GROSS BUILDING
5,269 SF.	3	15,807 SF.

NO. OF UNITS PER FLOOR	4
TOTAL UNITS PER BUILDING	12
TOTAL BEDS PER BUILDING	48



# Unit Plans

State Campus Village



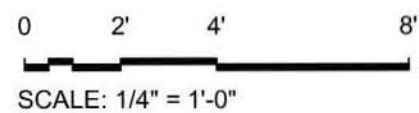
NEVADA STATE  
COLLEGE



**1 BEDROOM UNIT  
NET AREAS**

ROOM NAME	NET AREA
BATHROOM	56 SF
LIVING ROOM	125 SF
KITCHEN & DINING	128 SF
BEDROOM 1	132 SF

**441 NSF**



**1 - Bedroom/ 1 - Bath Floor Plan**

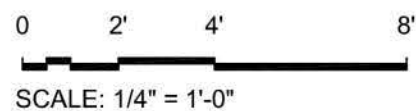
(BUSINESS, FINANCE & FACILITIES COMMITTEE 06/07/18) Ref. BFF-10, Page 307 of 389



**2 BEDROOM UNIT  
NET AREAS**

ROOM NAME	NET AREA
BEDROOM 1	130 SF
BEDROOM 2	130 SF
KITCHEN AND DINING	114 SF
LIVING ROOM	133 SF
BATHROOM 2	53 SF
CORRIDOR & PANTRY	81 SF
BATHROOM 1	48 SF

**689 SNF**



**2 - Bedroom/ 2 - Bath Floor Plan**

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April 30 2018

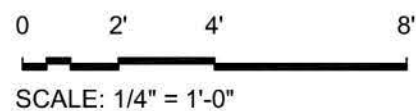




**4 BEDROOM UNIT  
NET AREAS**

ROOM NAME	NET AREA
BEDROOM 3	111 SF
BEDROOM 2	122 SF
BEDROOM 1	122 SF
BEDROOM 4	122 SF
LIVING ROOM	162 SF
KITCHEN & DINING	129 SF
CORRIDOR & PANTRY	211 SF
BATHROOM 2	43 SF
BATHROOM 1	49 SF

**1,070 NSF**

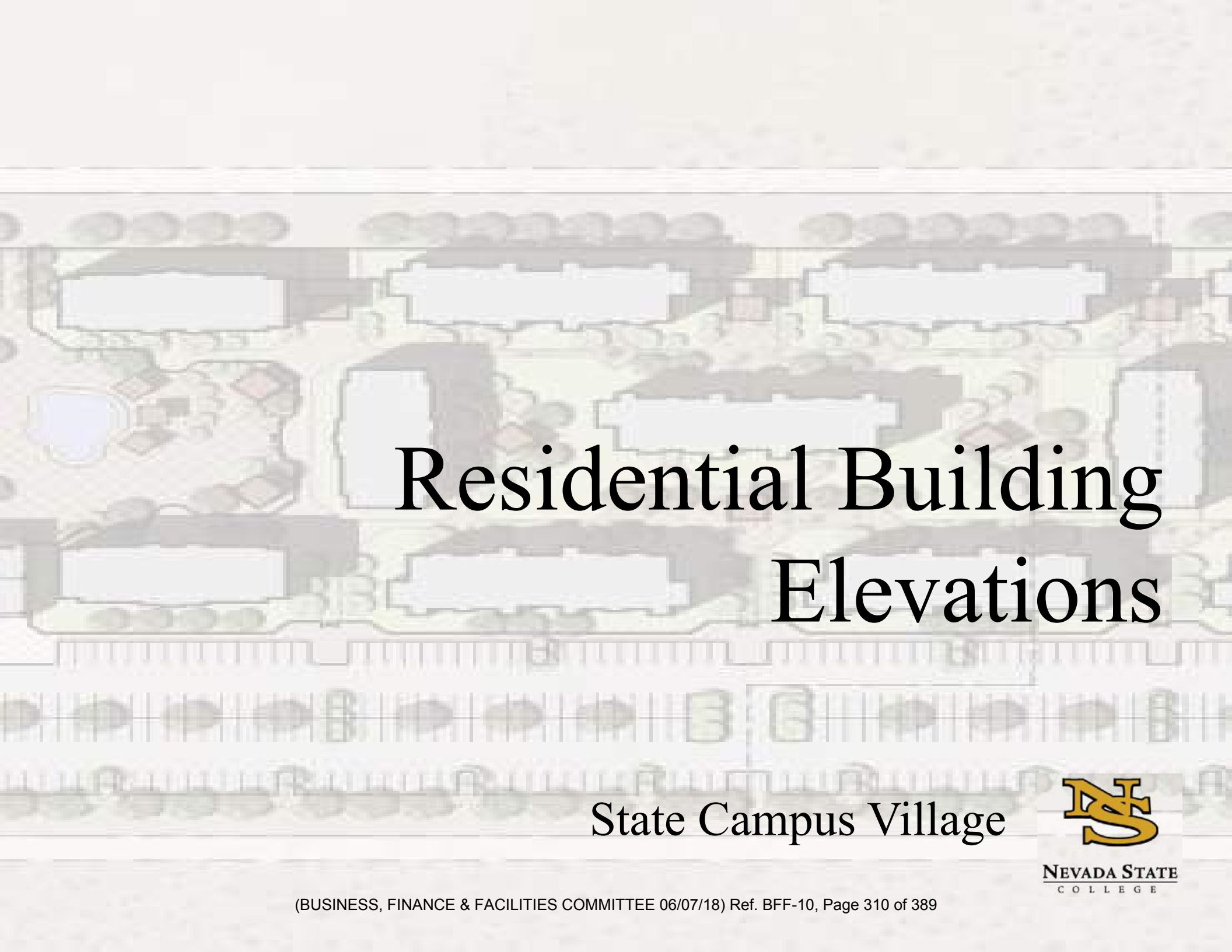


**4 - Bedroom Floor Plan**

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April 30 2018





# Residential Building Elevations

State Campus Village



NEVADA STATE  
COLLEGE



Entry Side



Back Side





Entry Side



Back Side

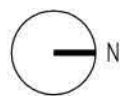


# The Community Building

State Campus Village



NEVADA STATE  
COLLEGE



# Comunity Building Floor Plan



North Elevation



East Elevation



South Elevation



West Elevation



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# **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - COST PLUS FEE WITH AN OPTION FOR A GUARANTEED MAXIMUM PRICE**

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## **Document No. 530**

Second Edition 2010  
© Design-Build Institute of America  
Washington, DC



## Design-Build Institute of America - Contract Documents

### LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.



# INSTRUCTIONS

For DBIA Document No. 530 Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price (2010 Edition)

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## Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address and form of business
_____	Page 1	Design-Builder's name, address and form of business
_____	Page 1	Project name and address
_____	Section 2.1.3	Identify other exhibits to the Agreement
_____	Section 4.2	Note the optional provisions that are provided
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days and note the optional language that is provided
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages and note the optional provisions that are provided
_____	Section 5.5	If the parties select the option provided they have to insert an amount
_____	Section 5.6	Complete blanks for early completion bonus and note the optional provision that is provided
_____	Section 5.7	Note the optional provisions that are provided
_____	Section 6.1.2	Insert basis for pricing preliminary services (optional)
_____	Section 6.2.1	Choose basis for Fee and complete blanks
_____	Section 6.2.2	Insert financial arrangements for adjustments and note optional provisions
_____	Section 6.3.3	Complete blanks for markup; insert or attach personnel names, etc.
_____	Section 6.3.4	Note the optional provision that is provided
_____	Section 6.4.4	Note the optional provision that is provided
_____	Section 6.6.1.1	Complete blanks for GMP, and note the optional provision that is provided
_____	Section 6.6.1.2	Complete blanks for Design-Builder's Contingency
_____	Section 6.6.3.1	Choose method for sharing savings; complete blanks
_____	Section 6.7.1	Note optional provision
_____	Section 7.1.1	Complete blanks for day of month
_____	Section 7.2.1	Complete blanks for retention percentage and note optional provision
_____	Section 7.2.2	Note the optional provision that is provided
_____	Section 7.4	Complete blanks for interest rate
_____	Section 8.1.3	Choose overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional)
_____	Section 10.1	Attach Insurance Exhibit
_____	Section 10.2	Insert amount and conditions of bonds or other security and note the options that are provided
_____	Section 11.1	Insert any other provisions (optional)
_____	Last Page	Owner's and Design-Builder's execution of the Agreement

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (“DBIA”) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA’s mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA’s Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA’s Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Documents on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA’s latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Agreement	<p>DBIA Document No. 530 (“Agreement”) should be used when the parties intend that Owner pay Design-Builder the Cost of the Work plus a Fee, with or without a Guaranteed Maximum Price (“GMP”). If there is uncertainty about Owner’s Project Criteria, or the Project Criteria remain to be developed by Owner and Design-Builder together, a cost-plus/GMP contracting approach is desirable.</p> <p>If there is certainty as to Owner’s Project Criteria, a lump sum fixed price for the completion of all design and construction services may be suitable, especially when the Owner procures Design-Builder’s services by competitive means. In such case, DBIA Document No. 525 should be used.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1, enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
2.1.2	GMP Exhibit, GMP Proposal	If a GMP is established upon execution of this Agreement, the GMP Exhibit must be attached pursuant to Section 6.6.1.1. If a GMP is established after execution of this Agreement, the GMP Proposal must be attached pursuant to Section 6.6.2. Both the GMP Exhibit and GMP Proposal will include those Basis of Design Documents Design-Builder uses as the basis for its GMP.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents, subject to Owner’s review and approval.
3.2	Order of Precedence	The Contract Documents are listed in Section 2.1 in the order of their precedence. The GMP Exhibit and GMP Proposal are based on the Basis of Design Documents, which are comprised of various documents. The parties should strongly consider establishing the priority of the various documents comprising the GMP Exhibit or GMP Proposal to avoid disputes should discrepancies arise among the documents. Moreover, Section 2.1.3 recognizes that there may be other exhibits attached to this Agreement. If this is the case, the parties should discuss whether these exhibits should be part of the Basis of Design Documents. If these exhibits are not made part of the Basis of Design Documents, these exhibits will not take priority over the Basis of Design Documents in the event of a conflict.
3.3	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.
3.4	Design Specifications	The Owner is cautioned that if it includes design specifications in its Project Criteria there is case law holding that the Design-Builder is entitled to rely on such information, and to the extent such information is not accurate, the Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time. Accordingly, the Owner to avoid such potential liability should consider using performance specifications.

Section	Title	Instruction
4.1	Work Product	This Agreement provides that the Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.
4.2	Owner's Limited License Upon Payment in Full	Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project. This Section also provides the parties with the option of transferring ownership of some or all of the Work Product to the Owner upon payment in full for all Work performed. Generally, where the Owner desires ownership of Work Product, it is sufficient to transfer ownership of unique architectural and design elements.
4.3	Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate	Owner should not use the Termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with its own or third party forces, Design-Builder shall grant Owner the rights set forth in Section 4.2, provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause, for reasons set forth in Section 11.4 of the General Conditions of Contract, these same conditions apply to Owner's use of the Work Product.
4.3.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to the execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.
4.4	Owner's Limited License Upon Design-Builder's Default	If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, to complete the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2.
4.5	Owner's Indemnification for Use of Work Product	Owner's use or alteration of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.
5.1	Date of Commencement	Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the Entire Work	Enter the calendar days duration by which Substantial Completion has to be achieved. The parties in this Section have the option of modifying the definition of Substantial Completion set forth in the General Conditions of Contract if they want to use a Temporary Certificate of Occupancy as the benchmark. If this option is selected, Substantial Completion will be deemed to be achieved no later than the date a Temporary Certificate of Occupancy is issued if applicable to the Project.

Section	Title	Instruction
5.2.2	Interim Milestones	<p>It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates. As presently drafted, no remedy is provided to the Owner if an interim milestone is not met. If the Owner has special requirements as it relates to interim milestones, the Owner may want to consider a remedy for the Design-Builder's failure to meet an interim milestone, as well as providing a bonus to the Design-Builder for satisfying such interim milestone.</p>
5.4	Liquidated Damages	<p>Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder. Moreover, in the event a GMP is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing liquidated damages until such time as the GMP is established.</p> <p>Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed.</p> <p>The parties are also provided the option of establishing liquidated damages if the Design-Builder fails to achieve Final Completion within a specified number of days after Substantial Completion. If this option is selected, the parties have to negotiate the number of days, as well as the liquidated damages amount. The parties in negotiating liquidated damages should keep in mind that the amount of liquidated damages for failing to achieve Final Completion should be a considerably scaled down amount and should reflect the financial harm to the Owner. In no case should the total amount of liquidated damages for the Project exceed an amount that is reasonably necessary to compensate Owner for Project delay.</p> <p>The parties also have the option here of eliminating liquidated damages altogether, in which case the Owner can recover actual damages for Project delay at an amount that is capped by the parties. The Owner is cautioned that it still cannot recover consequential damages, as they are waived under Section 10.5.1 of the General Conditions of Contract.</p>
5.5	Liquidated Damages Cap	<p>The parties can agree to cap liquidated damages for delay at a negotiated amount.</p>

Section	Title	Instruction
5.6	Early Completion Bonus	If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion. Moreover, in the event a GMP is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing an early completion bonus until such time as the GMP is established. The parties also have the option in Section 5.6 of capping the early completion bonus at a negotiated amount.
5.7	Compensation for Force Majeure Events	The parties are provided the opportunity of providing the Design-Builder the right to receive compensation for Force Majeure Events. By selecting this option, the parties agree to modify Section 8.2.2 of the General Conditions of Contract, in which case the parties have to negotiate how many cumulative days of Force Majeure delays must occur before the Design-Builder is entitled to either a negotiated amount per day for delay or the direct costs it has incurred as a result of such delay.
6.1.2	Optional Pricing	This Agreement allows the parties the flexibility to establish within the Contract Price a different payment basis for certain preliminary portions of the Work which may be necessary to permit Design-Builder to furnish Owner with a GMP. Alternatively, the parties may use DBIA Document No. 520 to perform certain preliminary design services prior to setting the GMP. Enter a description of any such services, the basis for determining the price, and the price to be paid.
6.2.1	Design-Builder's Fee	Enter the amount of Design-Builder's Fee as a sum certain or as a percentage of the Cost of the Work. Design-Builder's Fee shall be commensurate with the services it provides and the risk it assumes in providing single point responsibility to Owner.
6.2.2	Adjustments to Design-Builder's Fee	For additive Change Orders, the parties have to negotiate the Fee the Design-Builder will receive. For deductive Change Orders, the parties have the option by checking the appropriate box to signify whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.
6.3.3	Wages for Design-Builder's Employees at Principal or Branch Offices	DBIA endorses reimbursing salaries and associated benefits of Design-Builder's Project personnel, such as accountants, stationed at offices other than the field office, when to do so is more efficient and cost effective. Enter the percentage markup to be applied for Project-related overhead associated with such personnel. Insert, or attach as an exhibit, a list of such personnel and their job functions.
6.3.4	Employee Benefits	It may be simpler for the parties to agree on a multiplier (rather than actual costs) to compensate the Design-Builder for employee benefits. Accordingly, the parties may want to insert the multiplier to be applied to the wages and salaries of such reimbursable employees.

Section	Title	Instruction
6.3.7	Costs for Defective/Non-Conforming Work	The Cost of the Work shall include the costs to repair or correct defective or non-conforming Work (including warranty or corrective work performed after Substantial Completion) unless caused by Design-Builder's negligence. DBIA believes that Design-Builder should not be penalized for inadvertent mistakes which are inevitable when designing and constructing a Project. To do so would encourage ultra-conservatism in every task, the ultimate cost of which would be greater than a proactive approach to performing the Work.
6.3.23	Warranty Escrow	At this section, the parties are provided the opportunity to establish prior to Final Completion an escrow account in a negotiated amount to be used to reimburse the Design-Builder for its costs incurred in performing warranty Work. If funds remain in the escrow account after the expiration of the warranty period, the funds are returned to the Owner subject to Design-Builder's share of any savings. Note that even if the escrow account is exhausted, if funds remain under the GMP, the Owner is still obligated to reimburse the Design-Builder for its warranty Work.
6.4.4	Allowance Value	This section recognizes that the parties may agree that certain items of Work should be treated as an Allowance Item and priced based on Allowance Values. The Allowance Value for which the Design-Builder will be entitled to receive compensation includes direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the Allowance Item. All other costs associated with the Allowance Item, such as design fees, general conditions costs and fee, are deemed to be included in the Contract Price. However, by checking the box, the parties agree that in the event the actual cost of the Allowance Item is greater than or less than the Allowance Value by a negotiated percentage, then Design-Builder's right to Fee and markup shall be determined pursuant to Section 6.2.2.
6.6	The Guaranteed Maximum Price	<p>This Agreement provides the parties flexibility in establishing the Contract Price. Parties can establish a GMP before or after entering into this Agreement, or elect to proceed on the basis of costs plus a fee, without a GMP.</p> <p>If a GMP method is elected, the GMP should not be established until the Basis of Design Documents are sufficiently defined to make the GMP realistic and meaningful. Setting it too early does not permit reasonable opportunity for scope definition and evaluation of Project risk. On the other hand, setting it too late may not achieve Owner's objective of having an early price guarantee to enable it to make decisions relative to the Project.</p>

Section	Title	Instruction
6.6.1.1	GMP at Agreement Execution	<p>Enter the GMP, if appropriate. Attach as an exhibit to this Agreement the Basis of Design Documents used to establish the GMP. These documents comprise the GMP Exhibit which shall become a Contract Document pursuant to Section 2.1.1 of the Agreement. The Design-Builder does not guarantee any specific line item provided as part of the GMP.</p> <p>By selecting the alternate option, the Design-Builder agrees to guarantee the line item in its GMP for general conditions costs only. The Design-Builder agrees that it is responsible for paying general conditions costs in excess of this line item. The Design-Builder does not guarantee any other line items in the GMP.</p>
6.6.1.2	GMP Contingency	<p>Enter the amount of Design-Builder's Contingency. The Contingency is for the exclusive use of the Design-Builder and covers all unanticipated costs incurred that are not the basis of a Change Order. This section sets forth by way of example only the type of costs that would be funded out of the Contingency. Other costs, such as but not limited to any deductibles the Design-Builder is obligated to pay, would be subject to reimbursement. The Design-Builder is also required to provide the Owner with a monthly status report accounting for the Contingency, including all reasonably foreseen uses and potential uses of the Contingency for the upcoming three months.</p> <p>While not provided for in the Contingency provision, DBIA recognizes that there may be situations where the Owner will want to recapture the Contingency prior to Final Completion. For example, the Owner may want to use amounts in the Contingency to fund changes to the Project. The Owner's desire has to be balanced against the Design-Builder's need to use the Contingency to fund unanticipated costs for which it is liable. Accordingly, balancing these competing concerns is usually accomplished by releasing some of the Contingency to the Owner after the Design-Builder has bought out the Subcontractors, providing that the Design-Builder is not obligated to release Contingency amounts in excess of amounts identified for reasonably foreseen uses or potential uses of the Contingency.</p>



Section	Title	Instruction
6.6.2.1	GMP Proposal After Execution of This Agreement	<p>At the request of Owner, Design-Builder shall submit its GMP Proposal, which shall include the items listed in Sections 6.6.2.1.1 to 6.5.2.1.9. If the parties agree to additions or deletions from this list, modify this Section 6.6.2.1 appropriately.</p> <p>The Agreement provides the parties with flexibility as to when the GMP Proposal will be submitted after execution of the Agreement. Prior to execution of the Agreement the parties should discuss when Owner desires Design-Builder to submit its GMP Proposal.</p>
6.6.2.1.4	Schedule	<p>Given that expedited delivery is one of the primary factors driving many owners to select the design-build method, DBIA strongly believes that the parties should discuss and understand what each party must do to support the Project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of the various stages of the Work, including the date when Owner information and approvals are required, and any Owner created constraints. The Agreement also provides flexibility to establish the Scheduled Substantial Completion Date prior to submission of the GMP Proposal.</p>
6.6.2.3	Acceptance of GMP Proposal	<p>If Owner accepts the GMP Proposal, the parties should amend this Agreement to add the final GMP Proposal as a Contract Document pursuant to Section 2.1.2.</p>
6.6.2.4	Failure to Accept the GMP Proposal	<p>This Agreement provides three options for Owner in the event it fails to accept the GMP Proposal and two choices for Design-Builder if Owner fails to exercise any of the three options. These options are specifically designed to prevent one party from receiving a windfall in the event the parties cannot agree on the GMP and the Agreement is terminated.</p> <p>The parties should take note that if Owner exercises its option to terminate for convenience, or Design-Builder suspends performance, Design-Builder will not be entitled to payment for uncompleted Work provided by Section 8.2. However, additional payment for Owner's use of Work Product will be due Design-Builder pursuant to Section 4.3, if Owner proceeds to complete the Project using Design-Builder's Work Product.</p>
6.6.3	Savings	<p>One of the benefits of a GMP approach is the possibility that with good management by Design-Builder and timely support from Owner the actual Cost of the Work and Fee may be less than the GMP. This creates a savings pool that should result in a benefit to both Design-Builder and Owner. Sharing these savings creates an incentive for Design-Builder to save costs. Some factors to consider in determining how the Savings are shared include the timing for the establishment of the GMP and the amount of Design-Builder's Fee established under Section 6.2.1.</p>
6.6.3.1	Savings Calculations	<p>This section provides that if the actual Cost of the Work and Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted, the savings, if any, shall be shared. The Agreement offers two choices for distributing Savings. Choose a method and enter the appropriate figures.</p>

Section	Title	Instruction
6.7	Performance Incentives	In addition for the potential of the Design-Builder to share in Savings as set forth in Section 6.6.3, there may be other performance incentives that will influence Project success. Such incentives may include award fees tied to the Design-Builder achieving certain standards relative to client satisfaction, safety, and personnel retention. The parties are encouraged to discuss the use of such incentives during negotiation of this Agreement. Any agreement on the use of incentives should be set forth in an exhibit attached to this Agreement.
7.1.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.
7.2.1	Retainage	<p>Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.</p> <p>The parties are provided the option of modifying the retainage provision by checking the box. This option excludes from retainage the Design-Builder's General Conditions costs and amounts paid to Design-Builder's Design Consultant. The rationale for selecting this option is that the Design-Builder is obligated to pay its General Conditions costs in full each month and that under the design-bid-build delivery method, the Owner typically does not retain sums from its Designer.</p>
7.2.2	Release of Retainage	This section requires the Owner to release retainage to the Design-Builder. If the Design-Builder and Owner have established a warranty reserve in accordance with Section 6.3.2.4, the parties shall establish an escrow account at this time.
7.4	Interest	The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants and Subcontractors.
7.5	Record Keeping	The Owner is provided access to Design-Builder's accounting information as it relates to Costs of the Work. However, if the parties have agreed to multipliers or markups, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, the Owner can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.

Section	Title	Instruction
8.1.3	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.3.
8.2	Termination for Convenience: Additional Payments	Although it is important for Owner to have a process for terminating this Agreement for convenience, the process must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder will have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.
8.3	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3.
Article 9	Representatives of the Parties	<p>Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively.</p> <p>Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively.</p> <p>The parties can elect to establish these Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.</p>
10.1	Insurance	Attach an Insurance Exhibit setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor.
10.2	Bonds	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.

Section	Title	Instruction
11.1	Other Provisions	Insert any other provisions. For example, the parties may elect to have disputes resolved through litigation rather than arbitration in which case the optional language in this Section should be included.

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# Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price

*This document has important legal consequences. Consultation with  
an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year of 2018, by and between the following parties, for services in connection with the Project  
identified below:

**OWNER**

American Public Development LLC  
2821 W Horizon Ridge Pkwy, Suite 12  
Henderson, NV 89052

**DESIGN-BUILDER:**

Sletten Construction of Nevada, Inc.  
5825 South Polaris Ave.  
Las Vegas, NV 89118

**PROJECT:**

Nevada State College Student Housing I  
See attached Exhibit "A" incorporated herein by this reference

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.



## Article 1

### Scope of Work

**1.1** Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## Article 2

### Contract Documents

**2.1** The Contract Documents are comprised of the following:

**2.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract");

**2.1.2** The GMP Exhibit referenced in Section 6.6.1.1 herein or, if applicable, the GMP Proposal accepted by Owner in accordance with Section 6.6.2 herein;

**2.1.3** This Agreement, including all exhibits (List for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the GMP Exhibit;

**2.1.4** The General Conditions of Contract; and

**2.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

## Article 3

### Interpretation and Intent

**3.1** Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.6.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner's acceptance of the GMP Proposal.

**3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

**3.4**

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## Article 4

### **Ownership of Work Product**

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner’s Limited License upon Project Completion and Payment in Full to Design-Builder.** Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s occupancy of the Project, conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”), and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 below.

**4.3 Owner’s Limited License upon Owner’s Termination for Convenience or Design-Builder’s Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**4.3.1** Use of the Work Product is at Owner’s sole risk without liability or legal exposure to any Indemnified Party, and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 below, and

**4.4 Owner’s Limited License upon Design-Builder’s Default.** If this Agreement is terminated due to Design-Builder’s default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**4.5 Owner’s Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys’ fees, arising out of or resulting from the use or alteration of the Work Product.

**4.6** Notwithstanding anything herein to the contrary, Design-Builder acknowledges and agrees that until the anticipated financing has closed and the related funds are available to pay and/or reimburse Design-Builder for its service hereunder, Owner shall not be responsible for any costs Design-Builder has incurred or would otherwise be due. Further, under separate agreement between Owner and Design-Builder, Owner has agreed to compensate Design-Builder for various costs incurred once the funds from project financing has been funded and only then.

## Article 5

### Contract Time

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than that date which is provided for in the Completion Schedule provided by Design-Builder and agreed to by Owner.

The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:

*"Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can lawfully occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official."*

**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be submitted to Owner for approval. In the event the aforementioned milestone dates are not achieved, Design-Builder shall within three (3) days, notify Owner and present a recovery plan to assure Owner that the substantial completion shall be achieved no later than the date previously approved (herein referred to as "Make-up Schedule"). The purpose of the Make-up Schedule is to allow Owner and Design-Builder to collaboratively work to seek a solution which will result in completion by the original schedule or, failing to do so, arrive at a realistic completion date. Both parties acknowledge that because the project will be leased to students, it is critical to be able to allow the Operator of the project to communicate achievable occupancy dates to the students,

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract. Design-Builder shall use its diligent best efforts after Substantial Completion has occurred to finish all remaining work as quickly as reasonably possible.

**5.2.4** All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the agreed upon Schedule (the "LD Date"), Design-Builder shall pay Owner the as liquidated damages for each day that Substantial Completion extends beyond the LD Date the lesser of (i) \$3,000 or (ii) the actual interest due on the financing of Owner's Project. Design-Builder shall pay Owner on the first day of the each month.

Design-Builder understands that if Final Completion is not achieved within 45 days of the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within 45 days of Substantial Completion, Design-

Builder shall pay to Owner \$1,000, as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

It is agreed that if any payment is required to be made by Design-Builder under this Section 5.4, to the extent any funds are unused and not required otherwise after Final Completion in the Design-Builder's Contingency Budget, such amounts may be used by Design-Builder for the purpose in this Section 5.4.

5.7 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed twenty (20) cumulative days. Said additional compensation shall be limited to:

5.7.1 the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event. Design-Builder agrees to use its best efforts to mitigate such delays.

## Article 6

### Contract Price

#### 6.1 Contract Price.

**6.1.1** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

**6.1.2** For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: Design-Builder shall perform the service as provided on Exhibit B, Scope of Services.

#### 6.2 Design-Builder's Fee.

**6.2.1** Design-Builder's Fee shall be five percent (5%) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below.

**6.2.2** Design-Builder's Fee will be adjusted as follows for any changes in the Work:

**6.2.2.1** For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of ten percent (10%) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth in Exhibit \_\_\_\_\_ hereto.

**6.2.2.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

***[Check one box only]***

No additional reduction to account for Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) \_\_\_\_\_ percent (\_\_\_\_\_% ) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth in Exhibit \_\_\_\_ hereto applied to the direct costs of the net reduction.

**6.3 Cost of the Work.** The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include the following:

**6.3.1** Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

**6.3.2** Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

**6.3.3** Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit \_\_\_\_\_ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a \_\_\_\_\_ percent (\_\_\_\_\_% ) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

**6.3.4** Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

**6.3.5** The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work, subject to Owner's prior written approval.

**6.3.6** Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

**6.3.7** Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

**6.3.8** Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

**6.3.9** Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

**6.3.10** Costs of removal of debris and waste from the Site.

**6.3.11** The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

**6.3.12** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

**6.3.13** Premiums for insurance and bonds required by this Agreement or the performance of the Work.

**6.3.14** All fuel and utility costs incurred in the performance of the Work.

**6.3.15** Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

**6.3.16** Omitted.

**6.3.17** Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

**6.3.18** The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

**6.3.19** Deposits which are lost, except to the extent caused by Design-Builder's negligence.

**6.3.20** Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

**6.3.21** Accounting and data processing costs related to the Work.

**6.3.22** Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

#### **6.4 Allowance Items and Allowance Values.**

**6.4.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit or GMP Proposal and are included within the GMP.

**6.4.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

**6.4.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

**6.4.4** The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

**6.4.5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **6.5 Non-Reimbursable Costs.**

**6.5.1** The following shall not be deemed as costs of the Work:

**6.5.1.1** Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

**6.5.1.2** Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

**6.5.1.3** The cost of Design-Builder's capital used in the performance of the Work.

**6.5.1.4** If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

## **6.6 The Guaranteed Maximum Price ("GMP").**

### **6.6.1 GMP Established Upon Execution of this Agreement.**

**6.6.1.1** Design-Builder guarantees that it shall not exceed the GMP of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement ("GMP Exhibit"). Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the reasonable discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

**6.6.1.2** GMP will be submitted to Owner for approval and will include a Contingency in the amount of [SLETTEN TO SUPPLY]\_\_\_\_\_ Dollars (\$\_\_\_\_\_ ) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include, in addition to those amounts, if any, provided in Section 5.4: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance

or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

## **6.6.2 GMP Established after Execution of this Agreement.**

**6.6.2.1 GMP Proposal.** If requested by Owner, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

**6.6.2.1.1** A proposed GMP, which shall be the sum of:

- i. Design-Builder's Fee as defined in Section 6.2.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.1.2 hereof; and
- iii. If applicable, any prices established under Section 6.1.2 hereof.

**6.6.2.1.2** The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Proposal;

**6.6.2.1.3** A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

**6.6.2.1.4** The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

**6.6.2.1.5** If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

**6.6.2.1.6** If applicable, a schedule of alternate prices;

**6.6.2.1.7** If applicable, a schedule of unit prices;

**6.6.2.1.8** If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and

**6.6.2.1.9** The time limit for acceptance of the GMP Proposal, which shall be within five days after the financing shall have been finalized, closed and funded and made available to Owner.

**6.6.2.2 Review and Adjustment to GMP Proposal.** After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder



shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

**6.6.2.3** Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

**6.6.2.4** Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

**6.6.2.4.1** Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.2.3 above;

**6.6.2.4.2** Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

**6.6.2.4.3** Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item 6.6.2.4.2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

### **6.6.3 Savings.**

**6.6.3.1** If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

Fifty percent (50%) to Design-Builder and fifty percent (50%) to Owner.

**6.6.3.2** Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

## Article 7

### Procedure for Payment

#### 7.1 Progress Payments.

**7.1.1** Design-Builder shall submit to Owner on the first (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract. It is acknowledged that the project financing shall require that Public Finance Authority, a governmental entity organized and existing under the laws of the State of Wisconsin, the subtenant of the leasehold which shall own the Project, must review and approve all Applications for Payment. The Owner also shall review and approve the Design-Builder's Applications for Payment. Notwithstanding anything herein to the contrary, the timing of payment to Design-Builder shall be subject to the terms of the Indenture under which the financing for the Project shall be provided.

**7.1.2** Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

**7.1.3** If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

#### 7.2 Retainage on Progress Payments.

**7.2.1** Owner will retain five percent (5%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner may, in its sole discretion, elect not to retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

***[Design-Builder and Owner may want to consider substituting the following retainage provision.]***

Owner will retain five percent (5%) of the cost of Work, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner may, in its sole discretion, elect not to retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

**7.2.2** Within thirty (30) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion or otherwise identified by Owner to Design-Builder; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

**7.4 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## Article 8

### Termination for Convenience

**8.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**8.1.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**8.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

**8.1.3** *[Choose one of the following:]*

The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

or

Overhead and profit in the amount of \_\_\_\_\_ percent (\_\_\_\_\_%) on the sum of items 8.1.1 and 8.1.2 above.

**8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

**8.2.1** If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid one percent (1%) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

**8.2.2** If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid one percent (1%) of the remaining balance of the Contract Price, provided, however, that if a GMP has not been established, the above percentage shall be applied to the remaining balance of the most recent estimated Contract Price.

**8.3** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.

*[The following Article 9 should only be used if Owner and Design-Builder agree to establish their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]*

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Owner's Representatives.**

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: Eric A. "Tony" Traub, or such other as Owner may designate in writing to Design-Builder.

**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: To be determined within thirty days after the funding of the financing under the Indenture.

#### **9.2 Design-Builder's Representatives.**

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

To be determined

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

To be determined

## Article 10

### Bonds and Insurance

**10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

**Performance Bond.**

*[Check one box only. If no box is checked, then no bond is required.]*

Required                       Not Required

**Payment Bond** in the amount of 150% of the amount of the contract and in the form provided in NRS 108.2415(2).

*[Check one box only. If no box is checked, then no bond is required.]*

Required                       Not Required

**Other Performance Security.**

*[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]*

Required                       Not Required

## Article 11

### Other Provisions

**11.1 Other provisions, if any, are as follows:** *(Insert any additional provisions)*

*[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the Design-Builder's performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties, by including the following language, agree that the Design-Builder is obligated to achieve such standards.]*

Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

***[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the Parties may want to delete such sections and include the following alternative dispute resolution clause.]***

Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
*(Name of Owner)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.**



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# **STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

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## **Document No. 535**

Second Edition, 2010

© Design-Build Institute of America

Washington, DC





## Design-Build Institute of America - Contract Documents

### LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

# INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition)

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (DBIA) has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms-familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed.</p> <p>This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as "Agreement"). It may also be incorporated by reference into other related agreements, as between the Design-Builder and the Design Consultant, and the Design-Builder and the Subcontractor.</p>
General	Checklist	<p>The following Sections reference documents that are to be attached to the Agreement:</p> <p>Section 3.5.1 Owner's Permit List            Article 5 Insurance and Bonds            Section 9.4.2 Unit Prices</p>
2.1.3	Schedule	The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional's Services	Design-Builder's obligation is to deliver a design that meets prevailing industry standards. However, DBIA has provided the parties at Article 11 of the Agreement an optional provision whereby if Owner can identify specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. The Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with the Design-Builder's insurance advisor.
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner's Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.
5.1.1	Design-Builder's Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.
5.1.2	Exclusions to Design-Build	Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.
5.2	Owner's Insurance Requirements	Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.
5.4	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.

Section	Title	Instruction
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether the Design-Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Article 8 of the Agreement. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as more fully set forth in Article 8 of the Agreement.
Article 12	Electronic Data	Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.

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# Article 1

## General

### 1.1 Mutual Obligations

**1.1.1** *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

### 1.2 Basic Definitions

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

**1.2.2** *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

**1.2.3** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

**1.2.4** *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.5** *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

**1.2.6** *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

**1.2.7** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

**1.2.8** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes not including labor disputes specifically targeting Design-Builder, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.9** *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

**1.2.10** *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

**1.2.11** *GMP Proposal* means that proposal developed by Design-Builder in accordance with

Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee With an Option for a Guaranteed Maximum Price*.

**1.2.12 Hazardous Conditions** are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.13 Legal Requirements** are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.14 Owner's Project Criteria** are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

**1.2.15 Site** is the land or premises on which the Project is located.

**1.2.16 Subcontractor** is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.17 Sub-Subcontractor** is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.18 Substantial Completion or Substantially Complete** means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.19 Work** is comprised of all Design-Builder's design, construction and other services required by the Contract Documents to complete the Work, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the

Contract Price and within the Contract Time(s).

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the



meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements.**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price, provided such changes in Legal Requirements were not known by Design-Builder, or would not have been known with the exercise of reasonable diligence. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

**2.6.1** Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services.**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract

Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for Project Safety.**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of

defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## **Article 3**

### **Owner's Services and Responsibilities**

#### **3.1 Duty to Cooperate.**

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with reasonable turnaround times set forth in Design-Builder's schedule.

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents, provided if such defective or non-compliant work is latent or not reasonably discoverable, in which case, the times referred to in this Section 3.1 and in Sections 2.9 and 2.10 above, shall be tolled until discovered by Owner subject to the applicable statutes of repose.

#### **3.2 Furnishing of Services and Information.**

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide,

at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

**3.2.1.1** Surveys describing the property, boundaries, and reference points for use during construction, including existing service and utility lines;

**3.2.1.2** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**3.2.1.3** A legal description of the Site;

**3.2.1.4** To the extent available, record drawings of any existing structures at the Site; and

**3.2.1.5** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Financial Information.**

**3.3.1** At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

### **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

**3.5.2** Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

#### **4.2 Differing Site Conditions.**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as

inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

**4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

## Article 5

### **Insurance and Bonds**

#### **5.1 Design-Builder's Insurance Requirements.**

**5.1.1** Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

**5.1.2** Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

#### **5.2 Owner's Liability Insurance.**

**5.2.1** Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

#### **5.3 Owner's Property Insurance.**

**5.3.1** Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Owner is responsible for the

payment of any deductibles under the insurance required by this Section 5.3.1.

**5.3.2** Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

**5.3.3** Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

**5.3.4** Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

**5.3.5** Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

#### **5.4 Bonds and Other Performance Security.**

**5.4.1** If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

**5.4.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

**6.1.1** Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

**6.1.2** The Owner will timely review and approve the schedule of values so as not to delay the

submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

## **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof, in compliance with and on the forms provided in NRS 108.2457. Design-Builder shall supply conditional progress payment lien releases for itself and all subcontractors and suppliers that are to be paid pursuant to an Application for Payment, followed by an unconditional progress payment lien release on the next Application for Payment. Design-Builder shall submit conditional final lien releases from itself and all subcontractors and suppliers upon completion and on or before the Substantial Completion payment to Design Builder is paid.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are insured by Design-Builder and suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

**6.2.4** The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed in compliance with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

## **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

## **6.4 Right to Stop Work and Interest.**

**6.4.1** If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the



Agreement.

## **6.5 Design-Builder's Payment Obligations.**

**6.5.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

## **6.6 Substantial Completion.**

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Design-Builder shall prepare a Certificate of Substantial Completion, in a form acceptable to Owner and for Owner signature, which sets forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

## **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

**6.7.2.2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

**6.7.2.3** Consent of Design-Builder's surety, if any, to final payment;

**6.7.2.4** All operating manuals, warranties and other deliverables required by the Contract Documents; and

**6.7.2.5** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

**6.7.3** Omitted.

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## Article 7

### Indemnification

#### 7.1 Patent and Copyright Infringement.

**7.1.1** Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

#### 7.2 Tax Claim Indemnification.

**7.2.1** If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any

liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

### **7.3 Payment Claim Indemnification.**

**7.3.1** Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond within 30 days to release the claim or mechanic's lien brought against the Owner or Project. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

### **7.4 Design-Builder's General Indemnification.**

**7.4.1** Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

### **7.5 Owner's General Indemnification.**

**7.5.1** Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

#### **9.2 Work Change Directives.**

**9.2.1** A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

#### **9.3 Minor Changes in the Work.**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality,

performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

#### **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**9.4.1.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

**9.4.1.2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

**9.4.1.3** Costs, fees and any other markups set forth in the Agreement; or

**9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

#### **9.5 Emergencies.**

**9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

## **Article 10**

### **Contract Adjustments and Disputes**

#### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

#### **10.2 Dispute Avoidance and Resolution.**

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

#### **10.3 Arbitration.**

**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

**10.3.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**10.3.4** The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party.

**10.4 Duty to Continue Performance.**

**10.4.1** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

**10.5 CONSEQUENTIAL DAMAGES.**

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is (i) not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential, or (ii) apply to damages separate and apart from consequential damages arising out of delays in completion of the Work.

**Article 11**

**Stop Work and Termination for Cause**

**11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

**11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated

for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

**11.3.1.2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **11.4 Design-Builder's Right to Terminate for Cause.**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

**11.4.1.1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

**11.4.1.2** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during



the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**11.4.1.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

## **11.5 Bankruptcy of Owner or Design-Builder.**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**11.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**11.5.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either

confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

## **13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents. Notwithstanding the foregoing, Design-Builder acknowledges that PFA and the Lender have certain rights described herein to cause the Owner to be removed for certain specified reasons, and if so, Design-Builder shall continue Work provided satisfactory payment arrangements are made with either PFA or the Lender or both to the effect that Design-Builder will not have a loss due to the aforesaid parties causing the removal of Owner.

The Owner has granted the right to have the Agreement and Contract Documents assigned to either the Public Finance Authority ("PFA"), a unit of government and body corporate and politic of the State of Wisconsin, the conduit lender for the Project, and \_\_\_\_\_ ("Bank"), the bond trustee for the financing, and their respective, agents, successors, assigns and legal representatives. The assignment may be exercised at any time upon written notice substantially in the form attached hereto as Exhibit \_\_\_\_ ("Notice of Assignment") and will be effective upon Design-Builder's receipt of the notice. Any Notice of Assignment from Bank shall supersede any prior or future Notice of Assignment from PFA. Neither the PFA nor the Bank has any obligation to provide the Notice of Assignment, which shall be issued, if at all, in their sole and exclusive discretion. The Design-Builder hereby consents to the forgoing and agrees that the assignee shall become the Owner under this Agreement for all purposes once the Notice of Assignment is received.

## **13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

## **13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

## **13.5 Severability.**

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

## **13.6 No Waiver.**

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

**13.9 Amendments.**

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.



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# Exhibit D

# Insurance Exhibits

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**Document No. E-INSWD**

Second Edition, 2010

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Washington, DC



# Insurance Exhibit

## Design-Builder's Insurance Requirements

*(The Parties should consult their insurance advisors prior to completing this Exhibit)*

### 1.1 Insurance Types and Limits.

1.1.1 Design-Builder shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition):

*(Specify each type of insurance as applicable, minimum ratings of the carriers, applicable limits and deductible amounts, required endorsements, and other terms and conditions, as applicable.)*

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	
2. Employer's Liability (Bodily Injury by Accident)	\$1,000,000	\$1,000,000	\$25,000
a. By Disease	\$	\$	\$
b. Each Accident	\$	\$	\$
c. Each Employee	\$	\$	\$
3. Commercial General Liability	\$1,000,000	\$2,000,000	\$25,000
a. Bodily Injury/Property Damage per occurrence limit	\$1,000,000	\$2,000,000	\$25,000
b. Bodily Injury/Property Damage aggregate limit	n/a	\$	\$
c. Products/Completed Operation aggregate limit	n/a	\$	\$
d. Personal and Advertising Injury aggregate limit	n/a	\$	\$
e. Medical Expense limit (any one person)	\$	\$	\$
4. Contractor's Protective Liability (if applicable)	n/a	n/a	n/a
5. Commercial Automobile Liability	\$1,000,000	\$1,000,000	\$10,000

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
6. Professional Errors and Omissions pursuant to Section 1.3 (A) and 1.3 (B) below (per claim/aggregate) providing coverage for services performed by the named insured and any person or entity for whom the named insured is responsible	\$1,000,000	\$2,000,000	\$25,000
7. Contractor's Pollution Liability including coverage for microbial matter (if applicable)	\$n/a	\$	\$
8. Umbrella Excess Liability Insurance	\$5,000,000	\$5,000,000	\$
9. Builders Risk (per Owner's election)	\$Value of Project - estimated to be \$16,000,000	\$Value of Project - estimated to be \$16,000,000	\$25,000

**1.1.2** The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

**1.1.3** The insurance shall be written with carriers admitted in the State of Nevada having a Best rating of at least A-VIII.

**1.1.4 PROFESSIONAL LIABILITY INSURANCE.**

**1.1.3(A) Professional Liability Insurance To Be Provided By Design Consultant.** Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design Consultant. *[Note: Even if this coverage part is selected, the Design-Builder should consider obtaining its own professional liability coverage.]*

- The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design Consultant.

Design-Builder shall provide Owner with prior written notice of any cancellation or non-renewal of the Design Consultant's practice policy and shall include in the Design Consultant Agreement a provision requiring the Design Consultant to give the Design-Builder 30 Days prior written notice of any cancellation or non-renewal.

**1.1.3(A).1** The only permissible exclusion, limitation or restriction with respect to construction means, methods and techniques is one that applies to the implementation of such construction means, methods, techniques, sequences, or procedures by the Design Consultant or any person or entity providing design or other professional services as its Sub-Consultant. This exclusion is permissible only if such entities are not performing any construction activities. Notwithstanding the above, a Design Consultant's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences or procedures.

**1.1.3(A).2** Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

**1.1.3(A).3** Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design Consultant.

**1.1.3(A).4** The policy must provide coverage for damages resulting from delays, including delays in project completion and cost overruns that result from the rendering or failure to render professional services.

**1.1.3(A).5** If any portion of the design or other professional service is to be performed by any person or entity other than Design Consultant then it is the responsibility of Design Consultant to ensure that such person or entity provide Design-BUILDER and Design Consultant with evidence of insurance to comport with this Exhibit.

**1.1.3(A).6** Waiver of subrogation is to be provided in favor of Design-BUILDER and its officers, directors and employees, and (if commercially available) Owner and its officers, directors and employees.

**1.1.3(B) Professional Liability Insurance To Be Provided By Design-BUILDER.** Such policies must provide coverage for the scope of professional services to be provided by or on behalf of the Design-BUILDER.

The requirement for professional liability coverage on this Project shall be the standard form practice policy provided by Design-BUILDER.

Design-BUILDER shall provide Owner with prior written notice of any cancellation or non-renewal of the Design-BUILDER's practice policy.

**1.1.3(B).1** The Design-BUILDER's policy cannot contain any restriction, limitation or exclusion pertaining to construction means, methods, techniques, sequences or procedures except that the professional liability policy can exclude, limit or restrict coverage for claims, but only to the same extent that such coverage is provided by the Design-BUILDER's valid and collectible commercial general liability/umbrella excess liability policies. Notwithstanding the above, a Design-BUILDER's professional liability policy also cannot contain any restriction, limitation or exclusion pertaining to the design of construction means, methods, techniques, sequences, or procedures.

**1.1.3(B).2** Any exclusion, limitation or restriction related to Products or Product Design must be modified so as to provide coverage for goods or products installed.

**1.1.3(B).3** Faulty Work exclusion, limitation or restriction can only be applicable to the work self-performed by the Design-BUILDER.

**1.1.3(B).4** The policy must provide coverage for damages resulting from delays, including delays in project completion, and cost overruns that result from the rendering or failure to render professional services.

**1.1.3(B).5** If any portion of the design or other professional service is to be performed by any person or entity other than Design-BUILDER then it is the responsibility of Design-BUILDER to ensure that person or entity provide Design-BUILDER with evidence of insurance to comport with this Exhibit.

**1.1.3(B).6** Waiver of subrogation is to be provided in favor of Design-BUILDER and Owner (if commercially available) and their respective officers, directors and employees.

**1.1.5** Any coverage required to be maintained after Final Payment shall be identified below.  
*(List here any coverages required to be maintained after Final Payment is made)*

General Liability, including completed operations coverage  
Worker's Compensation  
Professional Liability, including Contractor's Protective Liability, if applicable.  
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.

## **2.1 Coverage Parameters and Endorsements.**



**2.1.1** Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form (December 2004 Edition) or equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided the same are agreed upon in writing by Owner and Design-Builder.

**2.1.1.1** Acceptable professional liability exclusions to the Design-Builder's commercial general liability insurance are limited to ISO endorsements CG 2280 or CG 2279 or their equivalent.

**2.1.2** General Liability, Automobile Liability, Worker's Compensation/Employers Liability and Umbrella Excess Liability policies shall each include the following endorsements:

**2.1.2.1** Unintentional Errors and Omissions Endorsement

**2.1.2.2** Notice of Occurrence Endorsement

**2.1.2.3** Knowledge of Occurrence Endorsement

**2.1.3** Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.

**2.1.4** Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as the underlying policies.

**2.1.5** Contractors Pollution Liability shall either be written on an occurrence or claims-made basis. If written on a claims-made basis, the policy must comport to Section 4.1.5.

**2.1.5.1** The policy is to provide coverage for off-site transportation by all applicable modes of conveyance. When required, coverage is also to be provided for claims involving materials removed from the site and brought to off-site disposal, treatment and storage facilities.

**2.1.5.2** Any restriction, limitation, or exclusion related to Naturally Occurring Substances must be modified so as not to apply to microbial matter and the release of such Naturally Occurring Substances as a result of the performance of Operations.

### **3.1 Additional Insureds**

**3.1.1** Owner and Owner's officers, directors and employees shall be included as an additional insured on general liability, umbrella and automobile liability policies of insurance of the Design-Builder and its Subcontractors and Design Consultants at any tier. If required, as set forth above, Owner shall also be included as an additional insured on the Design-Builder's Contractor's Pollution Liability policy of insurance. No person shall be named as an additional insured on any professional liability policy. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Design-Builder shall furnish to Owner a copy of all Certificates of Insurance showing the Owner as additional insured as set forth above. Design-Builder shall require Subcontractors and Design Consultants of any tier to furnish such certificates, and upon request of the same will furnish them to the Owner. Owner shall not be an additional insured on any other of Design-Builder's policies except for those which are specifically listed below: *(List here any other policies for which the Owner will be an additional insured, as well as other entities who are to be named an additional insured.)*

**3.1.2** Each of the policies designated in section 3.1 is to provide a waiver of subrogation in favor of those persons or entities included as additional insureds. A waiver of subrogation is also to be provided to such entities under Worker's Compensation/Employer's Liability policies.

**3.1.3** Additional Insured coverage provided under the Commercial General Liability/Umbrella/Excess and, if applicable, Design-Builder's Contractor's Pollution Liability policies, shall cover both the premises/operations and completed operations hazards.

#### **4.1 Terms and Effective Dates.**

**4.1.1** If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

**4.1.2** If the Contractor's Pollution Policy is made on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement. The termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after Final Payment is made.

**4.1.3** Professional Liability coverage shall be retroactive to the date that professional services first commenced.

**4.1.4** All Claims-Made Policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.

**4.1.5** List here any coverage required to be maintained after Final Payment:

General Liability, including completed operations coverage  
Worker's Compensation  
Professional Liability, including Contractor's Protective Liability, if applicable.  
Umbrella Coverage

Such coverage shall remain in place for six (6) years after Substantial Completion.



## Insurance Exhibit

# Owner's Insurance Requirements

*(The Parties should consult their insurance advisors prior to completing this Exhibit)*

### 1.1 Insurance Types and Limits.

1.1.1 Owner shall purchase and maintain insurance of the types, with limits of liability, containing such endorsements and subject to such terms and conditions as follows, as well as Article 5 of DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition):

*(Specify each type of insurance as applicable, minimum ratings of the carriers, applicable limits and deductible amounts, required endorsements, and other terms and conditions, as applicable. Note: waivers of subrogation should be carefully considered with insurance advisor)*

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
1. Worker's Compensation	Statutory Limits	Statutory Limits	
2. Employer's Liability (Bodily Injury by Accident)	\$1,000,000	\$1,000,000	\$25,000
a. By Disease	\$	\$	\$
b. Each Accident	\$	\$	\$
c. Each Employee	\$	\$	\$
3. Commercial General Liability	\$1,000,000	\$2,000,000	\$25,000
a. Bodily Injury/Property Damage per occurrence limit	\$1,000,000	\$2,000,000	\$25,000
b. Bodily Injury/Property Damage aggregate limit	n/a	\$	\$
c. Products/Completed Operation aggregate limit	n/a	\$	\$
d. Personal and Advertising Injury aggregate limit	n/a	\$	\$
e. Medical Expense limit (any one person)	n/a	\$	\$
4. Commercial Automobile Liability	n/a	\$	\$
5. Umbrella Excess Liability Insurance	n/a	\$	\$

Type of Insurance [Insert Rating of Carrier]	Minimum Limits Required Per Claim/Occurrence	Minimum Limits Required Aggregate Policy Limits	Maximum Deductible
6. Builders risk insurance provided pursuant to DBIA Document No. 535 <i>Standard Form of General Conditions of Contract Between Owner and Design-Builder</i> (2010 Edition)	By Design-Builder	By Design-Builder	By Design-Builder
7. Other Coverages Required on a Project Specific Basis (e.g. Site Pollution)	\$	\$	\$

**1.1.2** The insurance required by this Section 1.1.1 shall be written for not less than limits of liability specified in the table above or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of Final Payment.

**1.1.3** Any coverage required to be maintained after Final Payment shall be identified below. *(List here any coverages required to be maintained after Final Payment is made)*

Commercial General Liability

**1.1.4** In the event the Owner is providing any design or other professional service (either in-house or through a separate person or entity contracted by Owner), the Owner shall provide to Design-Builder evidence of professional liability coverage for that scope of work.

**2.1 Coverage Parameters and Endorsements.**

**2.1.1** Commercial General Liability Insurance shall be written on an occurrence basis, utilizing standard ISO unmodified coverage form (December 2004 Edition) or equivalent. Endorsements excluding, restricting, or limiting coverage may be acceptable under certain circumstances provided the same are agreed upon by Owner and Design-Builder.

**2.1.2** General Liability, Automobile Liability, Worker's Compensation/Employers Liability and Umbrella Excess Liability policies shall each include the following endorsements:

**2.1.2.1** Unintentional Errors and Omissions Endorsement

**2.1.2.2** Notice of Occurrence Endorsement

**2.1.2.3** Knowledge of Occurrence Endorsement

**2.1.3** Commercial Automobile Liability coverage shall be provided by standard ISO Commercial Automobile or Truckers Policy covering all Owned, Non-Owned and Hired Vehicles.

**2.1.4** Umbrella/Excess Liability must schedule Commercial General Liability, Automobile/Truckers Liability and Employers Liability as underlying policies. The Umbrella/Excess Liability policies shall be written in accordance with the scheduled underlying policies and must be as broad as underlying policies.

**3.1 Additional Insureds.**

**3.1.1** Design-Builder and Design-Builder's officers, directors and employees and Subcontractors and Design Consultants of any tier shall be included as an additional insured on the builder's risk policy. Any coverage granted to an additional insured shall be primary and that coverage independently carried by an additional insured shall not contribute. Owner shall furnish to Design-Builder a copy of all Certificates of Insurance showing the parties named as an

additional insured as set forth above. Design-Builder shall not be an additional insured on any other of Owner's policies except for those which are specifically listed below: *(List here any other policies for which the Design-Builder will be an additional insured, as well as other entities who are to be named as an additional insured on any of the specified policies.)*

**3.1.2** Additional Insured coverage provided under the Commercial General Liability and Umbrella/Excess policies shall cover both the premises/operations and completed operations hazards.

#### **4.1 Claims-Made Policies**

**4.1.1** All claims-made policies must: (a) permit reporting of circumstances that could give rise to a claim; and (b) provide coverage for post-expiration claims resulting from such circumstances.